Office-Supreme Court, U.S.
FILED
JUL 8 1981
CLERK

No. 80-1577

IN THE

Supreme Court of The United States

OCTOBER TERM, 1980

CITY OF MESQUITE

Appellant.

v.

ALADDIN'S CASTLE, INC.

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

ELLAND ARCHER
City Attorney
711 N. Galloway
Mesquite, Texas 75149
(214) 288-7711
Attorney for Appellant

THOMAS L. CASE
BICKEL AND CASE
5441 First International Bldg.
Dallas, Texas 75270
(214) 651-8545
Attorney for Appellee

APPEAL DOCKETED MARCH 13, 1981
PROBABLE JURISDICTION NOTED MAY 18, 1981

TABLE OF CONTENTS

		Page
1.	Relevant Docket Entries	1
2.	Verified complaint for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction	3
3.	Temporary Restraining Order	14
4.	Defendant's Answer to Plaintiff's Complain for Preliminary and Permanent Injunction	16
5.	Defendant's Motion to Dismiss	27
6.	Testimony from hearing on Preliminary Injunction	28
7.	Exhibits from hearing on Preliminary Injunction	69
8.	Preliminary Injunction	110
9.	Motion to file Supplemental Complaint	111
10.	Reply to Motion to file Supplemental Complaint	115
11.	Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction	117
12.	Testimony from hearing on a Permanent Injunction	118
13.	Order pursuant to hearing on Permanent Injunction	158
14.	Judgment	160

RELEVANT DOCKET ENTRIES

1. February 11, 1977; Verified Complaint for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction filed
2. February 11, 1977; Temporary Restraining Order filed
3. February 24, 1977; Defendant's Answer to Plaintiff's Complaint for Preliminary and Permanent Injunction filed
4. March 11, 1977; Defendant's Motion to Dismiss filed
5. March 21, 1977; Preliminary Injunction filed
6. June 6, 1977; Plaintiff's Motion to file Supplemental Complaint with attached Exhibit "A" filed
7. June 9, 1977; Defendant's Motion to Dismiss for lack of Subject matter Jurisdiction filed
8. June 10, 1977; Defendant's Reply to Motion to File Supplemental Complaint filed
9. June 29, 1977; Memorandum opinion filed
10. August 29, 1977; Order filed
11. September 15, 1977; Notice of Appeal from Order entered on August 29, 1977, filed
12. September 28, 1977; Defendant's Notice of Appeal from Order of August 29, 1977
13. September 30, 1977; Judgment ordered entered nunc pro tunc as of August 29, 1977, filed

14. November 17, 1980; Opinion and Judgment of United States Court of Appeals for the Fifth Circuit

15. November 28, 1980; Petition for rehearing **En Banc** in Fifth Circuit Court of Appeals filed

16. December 15, 1980; Order denying rehearing **En Banc**

17. January 6, 1981; Judgment of November 16, 1980, issued to clerk as Mandate

18. March 10, 1981; notice of appeal to the Supreme Court of the United States filed

19. May 18, 1981; Order noting probable jurisdiction filed in the United States Supreme Court

20. May 21, 1981; Order of Supreme Court noting probable jurisdiction filed in United States District Court of Appeals for the Fifth Circuit

IN THE

United States District Court

FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

ALADDIN'S CASTLE, INC.

v.

THE CITY OF MESQUITE

CIVIL ACTION NO.

CIVIL ACTION NO.

VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION

COMES Now, Aladdin's Castle, Inc., hereinafter called Plaintiff, complaining of the City of Mesquite, hereinafter called Defendant, and for cause of action would show the Court the following, to-wit:

NATURE OF THIS ACTION INCLUDING RELIEF SOUGHT

1. This is an action by Plaintiff to seek a Temporary Restraining Order and Preliminary and Permanent Injunctions to prohibit the City of Mesquite, Texas and all duly

authorized officials of that city from enforcing Ordinance No. 1353, Section 5 purportedly enacted by the City of Mesquite February 7, 1977 as to Plaintiff's place of business at Town East Mall, Mesquite, Dallas County, Texas.

2. As reason for this action Plaintiff would show that such Ordinance is arbitrary, unreasonable, and unnecessary and the effect of it deprives Plaintiff of its property without due process and equal protection of the law under the 14th amendment to the Constitution of the United States and Article 1, Sections 3 and 19 of the Constitution of the State of Texas.

3. Unless this Court immediately grants a Temporary Restraining Order and Preliminary Injunction, Plaintiff will continue to suffer irreparable harm and injury for which there is no adequate remedy at law. Further, this Temporary Restraining Order and Preliminary Injunction is sought in order to maintain the status quo until the rights of Plaintiff can be fully and finally adjudicated. To grant the Temporary Restraining Order and Preliminary Injunction awaiting final adjudication cannot possibly result in any harm or damage precuniary or otherwise to the City of Mesquite, its officials, the citizens of the United States or anyone else.

4. Ordinance No. 1353, a true and correct copy of which is attached hereto as Exhibit "A", the enforcement of which is sought to be immediately prohibited purports to prohibit Plaintiff from allowing anyone under the age of seventeen (17) years to play or operate a coin-operated amusement machine unless accompanied by a parent or legal guardian.

JURISDICTION AND VENUE

5. Plaintiff is a corporation duly incorporated and validly existing under the laws of the State of Delaware

and has been issued a Certificate of Authority by the State of Texas as a foreign corporation to transact business in this State, and Defendant is a municipal corporation incorporated under the laws of the State of Texas located within Dallas County, Texas, which may be served with this Complaint and Citation at the City of Mesquite Municipal Building, 711 North Galloway, Mesquite, Dallas County, Texas, by serving its Mayor, Bob Beard, or its City Secretary, Norma G. McGaughy.

6. Plaintiff operates a coin-operated amusement center at Town East Mall in the City of Mesquite, Dallas County, Texas.

7. The amount in controversy is in excess of $10,000.00 and this action involves the Federal constitutionality of Ordinance No. 1353 and of the official conduct of the City of Mesquite, Dallas County, Texas.

8. In light of paragraphs 5, 6, and 7 above this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1332, 28 U.S.C. § 1343, and 42 U.S.C. § 1981 et seq. Venue is properly laid under 28 U.S.C. § 1391.

RELATION OF FACTS

9. Plaintiff entered into a Lease Agreement dated January 12, 1974, with Homart Development Co., a Delaware corporation, as lessor, and Plaintiff, as lessee, covering certain premises known as 2082 Town East Mayy, Mesquite, Dallas County, Texas, which lease is for the term of ten years at a monthly rental of $2,433.75. The Plaintiff leased the above-mentioned premises in Town East Mall for the express purpose of conducting therein a coin-operated amusement establishment and for this purpose Plaintiff expended approximately $80,000.00 in preparing its premises for business, all with the knowledge and encouragement of Defendant.

10. Defendant, The City of Mesquite, enacted Ordinance No. 1103 on March 19, 1973, which ordinance requires, *inter alia*, a license for coin-operated amusement establishments. Plaintiff notified Defendant during January, 1976, that it desired to conduct its business in Town East Mall, Mesquite, Dallas County, Texas, and requested that Defendant adopt a zoning change to permit Plaintiff to operate in Town East Mall and amend the provisions of Ordinance No. 1103 so as to permit persons under seventeen years of age to operate and play Plaintiff's coin-operated amusement machines. Therefore the Ordinance of the City of Mesquite prohibited persons under seventeen years of age to operate or play such amusement machines unless accompanied by a parent or legal guardian. Pursuant to Plaintiff's above-mentioned requests of Defendant, Ordinances No. 1310 and No. 1314 were enacted on April 5, 1976, to encourage Plaintiff to locate within the City of Mesquite and conduct its business in Town East Mall Ordinance No. 1310 specifically amended Ordinance No. 1103 so as to permit persons under seventeen years of age to operate and play coin-operated amusement machines such as Plaintiff's and to permit persons under seven years of age to operate and play such machines if accompanied by an adult, if such machines were controlled by a coin-operated amusement establishment located within a major shopping center such as Plaintiff's premises in Town East Mall. Ordinance No. 1314 was enacted to adopt a zoning change to grant to Plaintiff a "conditional use designation for an indoor commercial recreation for coin-operated amusement machines within Town East Mall."

11. Pursuant to Defendant's Ordinance No. 1103, Plaintiff heretofore duly obtained a license application from the City Secretary for a coin-operated amusement establishment and submitted such application properly completed to Defendant. However, on July 20, 1976, the City Manager

advised Plaintiff that pursuant to Ordinance No. 1103 he was disapproving Plaintiff's license application based upon an unfavorable recommendation by the Chief of Police. On July 23, 1976, Plaintiff through counsel notified the City Council that pursuant to Ordinance No. 1103 Plaintiff desired to appeal the City Manager's decision to the City Council. The City Council heard Plaintiff's appeal, and on August 16, 1976, the City Council refused to reverse the City Manager's decision and denied plaintiff's license application.

12. Thereafter, and on September 10, 1976, Plaintiff herein instituted suit against Defendant herein in cause No. 76-9329-D styled Aladdin's Castle, Inc. vs. The City of Mesquite in the District Court of Dallas County, Texas, 95th Judicial District. A copy of that Petition is attached hereto as Exhibit "B" and incorporated and included herein for all purposes. Suffice it to say that the action attacked the conduct of the City of Mesquite in that the Ordinance under which it purported to act was in violation of the Federal and State of Texas Constitutions and that the evidence under which the City purported to act under this unconstitutional Ordinance was not substantial evidence as a matter of fact and as a matter of law.

13. That cause of action set out in 76-9329-D was tried in State Court on the 13th day of January, 1977, and a Final Judgment in Plaintiff's favor was rendered and entered by the Honorable Claude Williams on the 14th day of January, 1977. An exact copy of that Judgment is attached hereto as Exhibit "C" and included herein for all purposes.

14. Thereafter and on the 14th day of January, 1977, the City Secretary of the City of Mesquite proceeded to issue a license to Aladdin's Castle, Inc. permitting it to operate a coin-operated amusement establishment at Town

East Mall. The City Secretary accepted the required $100.00 filing fee and gave a receipt therefor.

15. On or about the 20th day of January, 1977, the City of Mesquite by and through its City Attorney gave Notice of Appeal in such cause to the Clerk of the 95th Judicial District Court, Dallas County, Texas, but did not supercede the Final Judgment, and such appeal is presently pending and being prosecuted by the Defendant herein. After Judgment and before January 20th and after January 20th and before February 7, 1977, Elland Archer, the City Attorney of the City of Mesquite, orally stated to Stephen L. Berger, Attorney for Aladdin's Castle, Inc., that the City of Mesquite had no intention of preventing the operation of the coin-operated amusement center by Aladdin's as proposed except through its efforts in the appeal in the judicial proceeding. In that connection attached hereto and made a part hereof is a letter (Exhibit "D") from Mr. Archer on the stationery of the City of Mesquite dated January 31, 1977.

16. Thereafter, and on February 7, 1977, the City purported to enact Ordinance No. 1353. The effect of Section 5 of this Ordinance would be to prohibit persons under seventeen years of age from patronizing Plaintiff's establishment unless accompanied by a parent or legal guardian. The effect upon Plaintiff's business is to virtually prohibit a lawful business in that it becomes economically impossible to operate the center thus leaving Plaintiff with a $80,000.00 unusable capital investment and a $292,050.00 Lease obligation over a term of ten years.

COUNT I

17. In connection with paragraphs 1 through 16 above, Plaintiff alleges that the conduct of the City of Mesquite

in enacting Ordinance No. 1353 and enforcing same as to Plaintiff is not based on public necessity; nor justified on any other grounds; nor is such reasonable in its operation and is in fact unduly oppressive on Plaintiff; nor is the object of Ordinance No. 1353 necessary and appropriate for the accomplishment of any legitimate object within the domain of such City's police power. Such Ordinance No. 1353 is an unreasonable, arbitrary, and capricious exercise and abuse of the City of Mesquite's police power and as such void. The enactment and enforcement of Ordinance No. 1353 is void as to Plaintiff for the reason that such Ordinance and enforcement thereof has no connection and is not necessary and appropriate for the accomplishment of any legitimate object of the City's police power to protect the health, safety, comfort, and welfare of its citizens.

In consideration of all of the above, Ordinance No. 1353 and the enforcement thereof has the effect of depriving Plaintiff of its property without due process of law and deprives Plaintiff of equal protection of the law in violation of the rights of the Plaintiff under the 14th amendment to the Constitution of the United States and Article 1, Sections 3 and 19 of the Constitution of the State of Texas.

COUNT II

18. Plaintiff realleges and reasserts paragraphs 1 through 17 above and would further show the following. At all times since prior to the execution of the Lease with Homart, Plaintiff and its attorney, Stephen L. Berger were assured by the officials of the City of Mesquite that Plaintiff would be permitted to operate its coin-operated amusement center at the chosen location. This course of conduct continued until the denial of the permit, as heretofore alleged in July of 1976. Based upon these assurances the Plaintiff had entered into the heretofore described Lease for a period

of ten years. Based upon these assurances and the conduct of the Defendant in passing the Ordinances it had in fact passed, Plaintiff had additionally spent approximately $50,000.00 in leasehold improvements of various types. Up until the date in July when its application for a license was denied.

19. After its application was denied it ceased to expend any monies seeking only relief through legal channels including the final ruling of the City Council on August 16, 1976 and the perfection of its appeal to the District Court and trial therein.

20. After entry of Judgment on the 14th day of January, 1977 Plaintiff, whose principal office and place of business is in Chicago, Cooke County, Illinois, made contact with the City Attorney, Elland Archer, to determine whether or not the City would take any further action to prevent its operation of its business in light of the conduct of the City Secretary who issued the license on January 14, 1977. The contact was made on behalf of Plaintiff by Stephen L. Berger, its attorney, and Mr. Archer gave oral assurances that the City would take no further action to prevent the operation of the center other than the prosecution of the appeal in the State Court matter. These assurances were buttressed by the letter of Mr. Archer, Exhibit "D" attached hereto. In reliance upon these representations by City officials in issuing the license and in giving the oral and written assurances stated herein, Plaintiff expended another $40,000.00 in causing machines to be shipped to its prospective place of business in Mesquite, Texas, and preparing the place of business for operation.

21. In fact, the coin-operated amusement center was opened and placed in operation on the 5th day of February, 1977.

22. Thereafter, and on the 7th day of February, 1977 the City Council passed Ordinance No. 1353 which purports to prohibit persons under seventeen years of age from playing or operating any of the machines unless accompanied by a parent or legal guardian.

23. The effect of the Ordinance purportedly enacted on the 7th of February, 1977 is unduly oppressive and highly injurious to legitimate business and effectively prohibits its operation. Such conduct on the part of the City was taken by it without any justification or reason under its police powers and solely for the reason of attempting to accomplish something indirectly which the Courts of this State have so far held that it cannot do directly. (Exhibit "E")

24. In the circumstances Plaintiff pleads that the City is estopped even though it was purportedly acting in its public capacity to take the action that it has in view of the detriment suffered by Plaintiff and the benefit received by the City of Mesquite.

NOTICE AND BOND

25. In that the attempted enforcement of Ordinance No. 1353 results in immediate and irreparable injury, loss and damage, this Court ought to grant a Temporary Restraining Order without notice and set the matter for hearing within ten days thereafter.

26. The undersigned attorney, Louis P. Bickel, upon his oath states that he contacted Elland Archer, City Attorney of the City of Mesquite, by telephone notifying him that this Verified Complaint for a Temporary Restraining Order would be filed today and that Plaintiff would attempt to secure a Temporary Restraining Order. Mr. Archer stated that he could not attend but that the Court could call him at 288-7711.

27. Although no possible monetary or other type injury can result to Defendant as a result of the granting of this Temporary Restraining Order or Preliminary Injunction the Plaintiff agrees that it will post bond in whatever amount is set by the Court in compliance with Rule 65(a), Federal Rules of Civil Procedure.

SERVICE OF ORDER

28. The Court ought to enter an Order permitting completed service of its Temporary Restraining Order, if it grants one, by delivery of a copy of this Verified Complaint and a copy of the Temporary Restraining Order to the City Secretary of the City of Mesquite or to Elland Archer by hand-delivery by any attorney acting on behalf of Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Court grant the following relief, to-wit:

a. A Temporary Restraining Order without notice prohibiting the City of Mesquite and any of its officials from enforcing Section 5 of Ordinance No. 1353 with respect to the Plaintiff and its operation of its coin-operated amusement center at Town East Mall, Mesquite, Dallas County, Texas, by serving a copy of this verified Complaint and Order upon the City Secretary of the City of Mesquite or Elland Archer by hand-delivery after Plaintiff makes Bond as ordered by the Court.

b. Set the matter for hearing on Preliminary Injunction within ten days after the Temporary Restraining Order is granted and order that the Temporary Restraining Order remain in effect until the ruling of the Court on the Preliminary Injunction.

c. Enter a Preliminary Injunction prohibiting the City of Mesquite and its officials from enforcing Section

5 of Ordinance No. 1353 with respect to Plaintiff's facility at Town East Mall, Mesquite, Dallas County, Texas through Final Judgment on the merits of this cause.

d. Upon final hearing of this cause, grant a Permanent Injunction prohibiting the City of Mesquite and all of its officials from in any way enforcing Section 5 of Ordinance No. 1353 with respect to Plaintiff and its facility located at Town East Mall, Mesquite, Dallas County, Texas.

e. Order that the City of Mesquite be served with Citation and a copy of this Verified Complaint and that it be required to respond in accordance with law.

f. Order the City of Mesquite to pay the Plaintiff its Costs of Court herein expended.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ALADDIN'S CASTLE, INC.
v.
THE CITY OF MESQUITE

CA 3-77-0194

TEMPORARY RESTRAINING ORDER

This cause of action came on to be heard on the 11th day of February , 1977, on the verified complaint of Aladdin's Castle, Inc. pursuant to Rule 65 of the Federal Rules of Civil Procedure for a Temporary Restraining Order. Such Temporary Restraining Order is requested by Plaintiff to be entered without notice to the adverse party herein. However, telephone notice was given to Defendant. The verified complaint makes this request for this relief on the ground that Defendant has enacted a void Ordinance as to it and that enforcement of same would result in irreparable harm and injury to the damage to Plaintiff's business and property.

On basis of Plaintiff's verified complaint, the Court is of the opinion that such ex parte Temporary Restraining Order without appearance of the adverse party should, in all things, be granted because if same is not done, Plaintiff will suffer irreparable injury to its business and property. The foregoing constitutes good and sufficient reason for the issuance of this Temporary Restraining Order without notice or appearance of the Defendant.

NOW, THEREFORE, IT IS ORDERED that the City of Mesquite and all of its officials shall in no way, directly or indirectly, attempt to enforce Ordinance No. 1353 with respect to

the Plaintiff and its facility at Town East Mall, Mesquite, Dallas County, Texas.

Defendant herein is further ordered to disseminate the contents of this Order to all officials of the City of Mesquite including the City of Mesquite Police Department and such communication is to be done immediately.

This Order shall remain in effect until the Court enters an Order on a hearing on the Preliminary Injunction. The Preliminary Injunction is set for a hearing on the 18th day of February , 1977, at 9 o'clock a.m.

I hereby order that this Temporary Restraining Order shall be considered to be served upon the City of Mesquite by hand-delivery of a copy of this Order and a copy of the Verified Complaint to the City Secretary of the City of Mesquite or to its Attorney, Elland Archer, by any attorney representing Plaintiff herein.

The condition of this Order is that Plaintiff shall file a bond in the usual form, to be approved by the Court, in the amount of One Thousand Dollars.

ENTERED AND SIGNED this 11th day of Feb., 1977, at 4:15 o'clock p.m. in the Court's chambers at the Federal Courthouse in Dallas, Texas.

W. M. TAYLOR, JR.
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Caption Omitted in Printing)

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION

TO THE HONORABLE COURT:

Comes now the City of Mesquite, Texas, and files this its Answer to Plaintiff's Complaint for Preliminary and Permanent Injunction and answers as follows:

I.

The City of Mesquite, Texas, is so far as the prosecution of criminal cases is concerned, the State of Texas under the doctrine of *Benton v. Maryland* 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707, and *Waller v. Florida* 397 U.S. 387, 90 S.Ct. 1184, 25 L.Ed.2d 435, and only the State of Texas, not the City of Mesquite, prosecutes violations of City Ordinances. Suit is brought against the City of Mesquite contrary to the Eleventh Amendment of the Constitution of the United States.

II.

The State of Texas has, by statute and constitution authorized the City of Mesquite to regulate the operation of pinball machines. Adjudication of the constitutionality of such regulation can only be by a three judge court.

III.

Plaintiff's complaint fails to state a claim upon which relief can be granted.

IV.

Injunctive relief is not available to restrain the enforcement of State Criminal Ordinances not void on their face.

V.

A preliminary injunction should not be granted because there is not a reasonable likelihood that Plaintiff will prevail on final hearing.

VI.

The right to offer pinball machine amusement service is not a vested property right but is subject to regulation under the police power. There is a rational relationship between the prohibition of those under seventeen (17) years playing pinball machines and the protection of the health, safety, morals and welfare of society and thus, no federal question exists under the Federal Constitution or laws.

VII.

ADMISSIONS AND DENIALS

Subject to the foregoing, Defendant City denys Paragraph 1 of Plaintiff's Complaint in part and says that the real thrust of Plaintiff's action is to have that portion of Article 1175, Texas Revised Civil Statutes, to wit:

> "22. To regulate the location and *control the conduct* of theaters, moving picture shows, ten pin alleys, vaudeville shows, *and all places of public amusements.*"

and

> "34. To enforce all ordinances necessary to protect health, life and property and to prevent and summarily abate and remove all nuisances and to preserve and

> enforce the good government, order, and security of the City and its inhabitants."

and Article 19.01 Taxation, General, Vernon's Annotated Civil Statutes, Section 10, C, to wit:

> "All cities and towns, whether incorporated under general or special law, shall have the power and authority to . . . and may *ban, prohibit, regulate, supervise, control,* or *license* any person firm . . . operating a billiard table within the incorporated limits of such city or town; . . . ."

declared unconstitutional.

VIII.

Defendant City admits paragraphs 4, 5, 6, 11, 12, 13, 14, 15, 21, 22, of the Plaintiff's complaint.

IX.

Defendant City denies paragraphs 2, 3, 7, 8, 17, 23, 24, and 25 of Plaintiff's complaint.

X.

Defendant, due to insufficient facts can neither admit nor deny paragraph 9, except it denys that the City had knowledge of the alleged facts, or encouraged any action by Plaintiff, number 19, in its entirety; that portion of number 18 wherein Plaintiff alleges certain action "based upon assurances and conduct of Defendant"; that portion of number 20 wherein Plaintiff alleges a $40,000.00 expenditure in reliance upon these representations by City officials in issuing the license. With respect to the issuance of the license, the City Secretary issued same under threat of contempt action because Plaintiff's attorney prepared

the judgment, obtained the trial judge's signature and presented same to the City Secretary, all without the knowledge of the City's Attorney and said City's Attorney had no opportunity to give notice of appeal or to supersede the judgment or to consult with City officials and never saw the Order of Injunction prior to issuance of the permit. To the extent issuance of the permit was relied upon for equitable estoppel, such reliance was not reasonable.

XI.

To the extent Paragraph 27 is prefaced with, "Although no possible monetary or other type injury can result to Defendant as a result of the granting of this . . . . Preliminary Injunction, Defendant denys such assertion".

XII.

Defendant City admits the first two sentences of Paragraph 16 and denies the remainder.

XIII.

With respect to Paragraph 10, although certain statements of fact therein are correct the thrust and connotation of the paragraph is misleading, unfair and partially untrue and is therefore denied.

Specifically, the allegation that the action taken was to "encourage" Plaintiff to locate in Mesquite is untrue. All contacts were initiated by Plaintiff and all action alleged Paragraph 10 was solicited by Plaintiff through adroit salesmanship and factual misrepresentation. Plaintiff Company was advised at the first meeting by the Mayor Pro Tem that no company with mafia connections was desired in the City.

With respect to the zoning action taken, such action pertained to the land itself and not any company or individual. It is not within the power of a municipality to condition zoning upon the merits of the owner or user. In other respects the allegations of Paragraph 10 are correct.

XIV.

Subject to the foregoing, Defendant affirmatively pleads that it is a Municipal Corporation organized under powers granted through the Texas Constitution, Article XI, Section 5, and is a co-ordinate agency of the Government of the State of Texas with the State Legislature, deriving powers *directly* from the Constitution and may, but need not, look to the Legislature, for grants of power. Within its sphere of authority it is equal to the Legislature and under the holdings of the highest court of the State, may do any act in such area that the Legislature could have done. A holding by this Honorable Court that the City of Mesquite lacks power to do any act is a holding that such power is not reposed in the soverign State of Texas. No question of State versus City power is before this Court.

XV.

That the determination of what protection is needed by minors under seventeen years of age is inherently and historically a legislative question and was acted upon by the governing body of the City of Mesquite as such.

XVI.

That a "rational basis" exists for the protection of minors from operation of coin-operated amusement ma-

chines defined in the attached ordinance, such basis being as follows:

1. The machines defined are adaptable to gambling.

2. The operator and manufacturer of such machines are engaged in the business of gambling in other areas.

3. Children between seven and seventeen years have insufficient maturity to make decisions on the expenditure of funds at places of this nature without the guiding influence of a parent or guardian and often expend their entire weekly allowance for school lunches in playing such machines and suffer for lack of nutrition the remainder of the week.

4. The possibility of children in the protected age group being taken by "hustlers" is real.

5. The temptation to children of the protected age group to gamble is greater than is prudent to allow, considering the duty of the State to offer guidance in the development of youth into productive, law abiding citizens.

6. The attraction of such machines to minors under seventeen lures children from school attendance and creates a truancy problem.

The owners and operators of this type establishment, including Plaintiff, traditionally and historically have little or no concern for the welfare or proper development of youth and are not proper parties to entrust the welfare of such persons of tender years and the welfare of society will be better served if young persons are not entrusted to such operators, and are prohibited from frequenting such places until they gain additional maturity, or by requiring the supervision of a parent or guardian.

Lack of concern of the Platintiff operator is indicated by the fact that Plaintiff's owner was set up in business by Emprise Corporation and/or the Jacobs family, well known mafia figures, Plaintiff's parent company is still owned by mafia figure associates such as Gerardo Cantena and Plaintiffs ship gaming machines from certain states contrary to federal law. Such atmosphere is unwholesome and unsafe for children of tender years.

XVII.

That the type of machines and the type of establishment comprises the area wherein the State has traditionally protected children and legislation defining such persons as a class for State protection different from that of adults has been approved by the United States Supreme Court.

Therefore the claimed right to earn a profit from such protected persons is not a property right or any right protected by the Fourteenth Amendment.

XVIII.

That Plaintiff is not in any wise denied the right to operate the establishment. That countless other establishments operate under the same and similar provisions relating to those under seventeen years old or eighteen years old in the case of Garland, a copy of said ordinance being attached hereto and made a part of this pleading as if copied verbatim.

XIX.

That the Fourteenth Amendment does not guarantee Plaintiff a right to a profit at the expense of otherwise valid legislation.

XX.

That the expectation of a profit is speculative and uncertain. That other lawful uses are available for the property alleged by Plaintiff including that of a coin-operated amusement center and Plaintiff's plea for equitable relief is not justified.

XXI.

That the need for enforcement of the complained of Ordinance outweighs the need for a temporary injunction where only a claimed loss of profit is at stake, particularly during the regular school year, and the right to have the ordinance obeyed is the status quo rather than the right to disobey the ordinance and the temporary injunctive relief should be denied and a hearing on the permanent injunction should be held before the beginning of the next school year.

Wherefore, premises considered, Defendant City prays that the Preliminary Injunction and the Permanent Injunction relief be denied and that Plaintiff be ordered to pay to the City of Mesquite the face amount of the bond and for such other and further relief to which it may be justly entitled.

CERTIFIED COPY OF RECORD

STATE OF TEXAS
COUNTY OF DALLAS

I, the undersigned, City Secretary of the City of Garland, Texas, a governmental subdivision of the State of Texas, in the performance of the functions of my office, hereby certify that the attached record is a full, true and correct copy of Section 17-13, 17-14, and 17-15 of the Code of Ordinances as the same appears of record in my office, and that I am the lawful possessor and have legal custody of said record.

WITNESS my hand and Seal of said City of Garland, Texas, at my office in said City, County and State aforesaid, this the 16th day of February A.D., 1977.

City Secretary
City of Garland, Texas

is closed, locked and vacated between the hours of 11:30 p.m. and 8:00 a.m. This section shall not apply, however, to pinball machines or other coin-operated games, if such machines or games are locked so that they cannot be played between the hours of 11:30 p.m. and 8:00 a.m. (Ord. No. 1516, § 1, 10-4-67)

Amendment note – Ord. No. 1516, § 2, repealed Ord. No. 1506, from which former § 17-12 was derived, and § 1 of said Ord. No. 1516 enacted §§ 17-12 – 17-16.

Sec. 17-13. Same — Minors prohibited; exception.

No person owning, operating or managing a pool hall shall allow any minor person under eighteen (18) years of age to enter such pool hall or to enter the area in which pool tables and pinball or other coin-operated games are located if kept in a separate area as provided in section 17-12 above, unless such minor person is accompanied by his parent or guardian. (Ord. No. 1516, § 1, 10-4-67)

Note – See amendment note following § 17-12.

Sec. 17-14. Same — Minors prohibited from playing pinball machines, etc. exception.

No person owning, operating or managing any "other place of amusement," as defined in section 17-1 hereof, or any employee of any such person, shall allow any minor person under the age of eighteen (18) years to play any pinball machine or other coin-operated game unless such minor person is accompanied by his parent or guardian. (Ord. No. 1516, § 1, 10-4-67)

Note – See amendment note following § 17-12.

Sec. 17-15. Same — Sign pertaining to minors to be exhibited.

It shall be the duty of the owner, exhibitor or lessee of every pinball machine or other coin-operated game other than those kept in a separate area as provided in section 17-12 above to affix and prominently display a sign on each such machine or game under his control, which sign shall read "PLAY BY MINORS UNDER EIGHTEEN YEARS OF AGE NOT ALLOWED UNLESS ACCOMPANIED BY PARENT OR GUARDIAN". (Ord. No. 1516, § 1, 10-4-67)

Note – See the editor's note following § 17-12.

Sec. 17-15.1. Same — Same — Provided by city.

Signs required by this chapter shall be considered sufficient only if they are issued by the city. The fee for such signs shall be two dollars ($2.00) each, and a duplicate may be issued for damaged or stolen signs. The fee for duplicates shall be one dollar ($1.00 per sign. (Ord. No. 2547, § 2, 3-11-75)

Editor's note – Ord. No. 2547 amended the Code by adding § 17-15.5, which has been redesignated as § 17-15.1 to maintain code format.

Sec. 17-16. Same — Violation grounds for revocation of permit.

The violation of any sections 17-12 through 17-15 above, or any other applicable statute or ordinance shall be sufficient grounds for the revocation of any permit granted pursuant to section 17-3 above. Such permit may also be suspended for a time definite and such suspension and revocation procedure shall be in accordance with section 17-9 of this Code. (Ord. No. 1516, § 1, 10-4-67; Ord. No. 2004, § 5, 10-19-71)

Note – See the editor's note following § 17-12.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Caption Omitted in Printing)

DEFENDANT'S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the City of Mesquite, Texas, Defendant hereinafter, and files this its Motion to Dismiss in Plaintiff's Suit for Injunction.

I.

There is no substantial federal question.

II.

Plaintiff seeks to enjoin the enforcement of criminal ordinances not void on their face. Plaintiff has an adequate remedy at law.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Motion for Injunction be dismissed.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Caption Omitted in Printing)

[9] JULES MILLMAN,

called as a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BICKEL:

Q. State your name, please, sir.

A. Jules Millman.

Q. What's your age?

A. Thirty-five.

Q. Where do you live?

THE COURT: Wait a minute, spell your last name.

THE WITNESS: M-i-l-l-m-a-n (spelling).

[10] Q. What's your age, please?

A. Thirty five.

Q. Where do you live?

A. Chicago, Illinois.

Q. What's your business, profession or job?

A. I am president of Aladdin's Castle, Incorporated.

Q. What is Aladdin's Castle, Incorporated?

A. We operate coin-operated family amusement centers throughout the United States.

Q. When did you go into that business?

A. I started the business on my own in 1969.

Q. Tell the Court what the business is, how it was started, what it does, what you do.

A. Well, when I graduated from college in 1965 I went to work for a company in Chicago called Worldwide Distributors. Worldwide Distributors is a distributor of all types of coin-operated products. I was employed as a salesman to sell coin-operated food vending machines such as Coke machines, cigarettes machines, candy machines and so forth. A principal part of Worldwide's business was also selling of coin-operated amusement machines such as pinball machines, coin-operated gun games, driving games and so forth. I was not involved in the selling of these games, however, I observed it [11] and I became interested in it. I noticed that most of these games were being sold to operators who were placing them in taverns, amusement arcades and in undesirable parts of the city and in general locations where young people who liked to play the machines couldn't readily get at them and as a result a stigma develops amongst the adults to the machines whereby they would associate the machines with being bad and really not wanting their children to play them.

I came up with the idea to go in business on my own. I always wanted to be in business on my own and I came up with the idea of opening coin-operated family amusement centers, not in the inner city, but in typical suburbia, in suburban areas, in new multi-million dollar enclosed shopping centers such as Valley View and the new Red Bird Mall and such as Town East. My idea was to lease a store in the enclosed mall, to completely carpet it, have an attendant on duty at all hours the store was open, and to strictly enforce certain rules such as no smoking at any

time, no food is permitted on the premises, no Cokes and to completely supervise the operation of the store at all times.

Well, our operation worked. I opened one store, then another and became very successful.

[12] Q. Was your company then acquired by another company and, if so, when?

A. In 1974, in April of 1974 my brother and I at the time were the sole stockholders and we sold our stock to Bally Manufacturing Corporation which is publicly held and on the New York Stock Exchange.

Q. How many stores had you opened up until that time?

A. At that time we had thirty stores in operation and we had an additional eight or nine leases that were signed and under construction.

Q. All right, sir. How many stores do you have in operation at this time?

A. Approximately one hundred.

Q. Where are they located generally speaking?

A. They are located — we have three stores in Canada and the rest are in the United States nationwide from California to New York and all the way down to Miami.

Q. All right. Now, do you have any stores in operation in the State of Texas?

A. Yes, we do.

Q. Where are they?

A. We have one in Valley View Center which is in the city limits of Dallas. We have one in the Site [13] Center which is in Wichita Falls and we have one in Abilene and one in San Antonio.

Q. All right. Are all of these stores that you have told me about located in the shopping center malls?

A. They are all in enclosed suburban shopping centers similar to Town East.

Q. When did you first come in contact with the City of Mesquite in an attempt to open a store in Town East Mall?

A. Approximately two years ago we started negotiating with Homart, who is the landlord, they are owned by Sears and Roebuck, they are the landlord at Town East to open a store in Town East. Our typical procedures which is the procedures I followed in this case is I called Steve Berger, our Chicago attorney, and he in turn hired a local attorney in the Dallas area to inquire as to whether or not there were any local laws or ordinances in the City of Mesquite that would prohibit us from operating in our typical fashion before we signed the lease with Homart. I was informed by Steve Berger, our local attorney, that there were two things that should be brought to our attention. Number one was that the City of Mesquite had an ordinance, current ordinance that said that children under the ages of seventeen years old could not play [14] coin-operated products, coin-operated games without their parents. Number two was that Town East Mall in the City of Mesquite was not properly zoned for our business use.

We hired a local attorney, Steve Berger and our local attorney went to Mesquite to a City Council meeting to inquire as to whether or not the City would be receptive as to allowing us to do business and in turn change their ordinance. We found out they were and the City of Mesquite removed their seventeen-year-old ordinance and in effect changed the zoning so we were able to go in and open our store in Mesquite, however, we were told we would not be issued a license until we finished building our store.

MR. ARCHER: Your Honor, if I may interrupt, I would like to interpose an objection to the hearsay testimony from persons not before the Court.

THE COURT: Well, let's find out who he was talking to.

MR. ARCHER: He just used the term "they."

THE WITNESS: Okay, sir.

THE COURT: That's the only reason I sustain the objection. If he was talking to somebody down here on the street in Dallas, that's one thing, [15] but if he was talking to somebody with the City of Mesquite that's some official, that's something else.

THE WITNESS: Okay. I personally was not at this Council meeting, however, Mr. Steve Berger, and the attorney that we hired were there. When I said "they," I was referring to them because I personally was not at the City Council meeting.

Q. Now, listen to the question, please, sir. Regardless of what anybody told you, did in fact the City of Mesquite pass a zoning ordinance permitting the operation of your center at Town East — I mean the Town East Mall?

A. Yes, they did.

Q. Did in fact the City of Mesquite pass an ordinance permitting persons under seventeen years of age to come into your establishment and play the machines without being accompanied by a parent?

A. Yes, they did.

Q. All right. Now, was this in March or April of 1976?

A. Yes, it was.

Q. All right. Did you go ahead and execute a lease with Sears, Roebuck or Homart, I should call it, then after that?

[16] A. Yes, we did.

Q. All right. What were the terms and conditions of that lease?

A. The terms of the lease was a ten-year lease and to pay rent and other charges to Homart Development in the approximate sum of three thousand dollars per month for the term of the lease.

Q All right. When did you commence payment of the rent?

A. We commenced paying rent in July of '76 which was the approximate time that we were required to open for business.

Q. Are you still paying?

A. We have paid every month since then up to the present.

Q. Okay. Now, in opening the store or attempting to open the store after the two ordinances we just discussed were passed, how much money did you spend and for what?

A. We spent —

MR. ARCHER: At this time I would like to interpose an objection to this question on the grounds that it is completely irrelevant and immaterial to the matter before the Court. There is no estoppel as to the police power of the State [17] or City. They may have some cases, I feel certain they deal with proprietary matters.

THE COURT: Well, I will hear the evidence, now, the effect of it is something else.

MR. ARCHER: Thank you, Your Honor.

THE COURT: But I will overrule the objection.

THE WITNESS: Repeat the question, please.

Q. After the City of Mesquite passed these two ordinances we have just talked about, you stated that you went ahead to open the store, how much money did you spend in doing that and for what?

A. We spent approximately ninety thousand dollars. We spent approximately forty-five thousand dollas on leasehold improvements, meaning physical construction of the store. This is what is known as a shell lease where the landlord gives us the steel, the stud walls and the dirt floor and we had to physically construct the store on our own, do our own electric work and our own plumbing and so forth. The balance of the moneys we spent was on our equipment and getting it here. The coin-operated machines we brought in range from a thousand dollars to five thousand dollars each, transporting them here, hiring a manager, training our help and so forth. In general pre-opening expense.

[18] Q. At the time you were to open, what happened?

A. Well, we were ready to open on a Friday and my supervisor called me in Chicago and said that the person that issues the license in Mesquite was out of town and is it okay if we open today and I said absolutely not, wait until we get an official license. On Monday morning I received a frantic call from the supervisor stating that the City of Mesquite has refused to grant us a license.

Q. Then, what did you do? In speaking, now, if you repeat any conversation from here on, repeat only a conversation from someone with the City of Mesquite and identify them, okay?

A. Well, at this time the City of Mesquite would not give us an answer as to why we were not being or as to why we were being denied a license. Two weeks later I came down to Dallas with Steve Berger and Francis Sweet,

another attorney of ours in Chicago, and appeared before the City Council of the City of Mesquite. The City Council told us he reason they were not giving us a license, were not granting us a license was because the Bally Manufacturing Corporation, our parent company, was part of the Mafia and for this reason they decided not to give us a license.

[19] Q. Okay. What occurred after that?

A. After that — well, of course, we did not open the store. After that we went to Court, District Court in the City of Dallas to present our case and you just explained the rulings. We found that the evidence was circumstantial, was not circumstantial and that it was hearsay, so to speak, and at that time we received our license from the City of Mesquite based on the Court's order and we opened for business.

Q. And that was the case that was tried in State Court in January, 1977, correct, sir?

A. Right.

Q. And the judgment was obtained in January of 1977?

A. Right.

Q. And the license was issued by the City of Mesquite in January of 1977?

A. That's correct.

Q. All right. And then you did go forward and did you spend any more money?

A. We had to spend money in the sense when we were denied our license we had to physically move all the equipment out to another location. We had no idea if and when we would get to bring the equipment back in there. We had to hire a manager because we [20] couldn't hold a manager

for that time. I would say we spent an additional five thousand dollars at that time.

Q. And did you open?

A. Yes, we opened February 5th of this year.

Q. What's the next thing that happened?

A. Well, the next thing that happened is I received a call from a newspaper reporter in the City of Dallas approximately two weeks after this. She had not been aware of the situation that had happened and just asked me to repeat everything that I have just told the Court, just to fill her in so she could write an article. Before I hung up the phone she said, "Are you aware that last night the City of Mesquite reinstated their seventeen-year-old ordinance?" And I replied, "No, I was not." She asked me what I intended to do and I told her that I intended to talk to my attorneys about it and follow through on it.

Q. So you came down here and we prepared a verified complaint which we have filed in this Court?

A. That's correct.

Q. Now, after the January trial did you inquire of your attorneys, don't tell me what they told you, did you inquire of your attorneys as to whether or not the City of Mesquite intended to do anything other than appeal the State Court case to the end of attempting to [21] keep you from opening your store?

A. Yes, I did.

Q. All right. And upon advice of the attorneys — first of all, did your lawyers tell you they talked with anyone at the City of Mesquite about that?

A. Yes, they did.

Q. And after that did you nevertheless proceed to open your store?

A. That's correct.

Q. All right. Now, what type of rules, regulations do you endorse in your store as to who is there, who does what and how does it run?

A. Well, the reason we have been so successful in opening up a hundred stores, I believe, is because we run a tight ship, so to speak. The rules that we enforce, which are rules of our own choosing, are rigorously enforced in all of our stores. Since we do so the landlords, including Homart, make these rules a part of our lease. Included in these rules are we have a full-time attendant on duty at all hours we are opened. Our store hours conform to the mall hours. If the mall is open from 9:00 a.m. to 9:00 p.m. that has to be our hours and we can't stay open later. We allow no smoking in our stores. We allow no food or beverages of any sort. All these rules are enforced.

[22] Q. Do you have any idea how much money your Town East business would make in a period of a year?

MR. ARCHER: Your Honor, we're going to object to this. There is no predicate for this type of question. He's just asking for a guess.

THE COURT: Well, I will overrule the objection. I think we can express an opinion on that.

A. Well, my opinion is based on the hundred stores that we have open and it's also based on my one month's operating experience here and I have found that after we open a store even as little as for a month it falls into a pattern based on our other stores. In my estimate, and it's just a range, the store is definitely profitable and that I expect

to make a profit after all expenses of twenty-five to fifty thousand dollars per year in this location.

MR. ARCHER: Your Honor, I don't wish to waive my objection but now he has answered that he expected to make this. At this time I will object to his testimony of what his expectation is because that is not an estimate, that's simply an expectation or a guess.

THE COURT: Well, I think it's a matter of expressing his opinion about that and it will go to the weight of it.

[23] MR. ARCHER: Thank you, Your Honor.

Q. Now, directing your attention to the passage of the ordinance by the City of Mesquite after you opened your store after you won your lawsuit in the District Court.

A. Right.

Q. That ordinance was passed two days after you opened, do you recall that?

A. That is correct.

Q. All right. Now, when we were getting ready for the hearing the last time, I think a couple of weeks ago, you came down here the day before?

A. Yes.

Q. And didn't you and I and Mr. Steve Berger and Mr. Glenn Portman go out to Mesquite?

A. Yes, we did.

Q. And to the Big Town Shopping Mall?

A. Yes, we did.

Q. Big Town is not where you intend to operate?

A. No, it is not.

Q. All right. Can you tell the Court what you found there?

A. Big Town is another shopping mall located within the city limits of Mesquite. It is an older center. The reason we went out there was to look at [24] another amusement center which supposedly was similar in certain respects to ours. We got out there and I saw a store approximately the size of ours with approximately twenty-five coin-operated games in there. The games that were in there we do not use in any of our stores in the sense that they are from our standards considered junk value. They are games that are ten or fifteen years or older, whereas our games are the current modern games being manufactured.

In addition to that I saw a store which had virtually no decoration. It had exposed neon light bulbs. It had change machines in the center of the floor. It had absolutely no supervision whatsoever. Kids of all ages were playing the games. I observed kids as young as probably six or seven years old just barely able to reach the coin slots without their parents. I didn't see any parents while I was there.

I also saw big step stools on the floor which would enable the little kids to reach the machine. Each machine in the store had a license from the City of Mesquite on it.

We also inquired around as to the neighbors in the mall and also as to the mall security guard to find out if there was an attendant but maybe this was his day off or he was sick. We found [25] out, in effect, that there was no attendant and that there never is an attendant at this location.

We inquired as to how long this particular amusement center had been there and nobody seemed to know. It would be my guess it was somewhere in the neighborhood of five to ten years by the looks of it.

Q. All right. Now, did you see children in that center at Big Town playing without parents who were under seventeen years of age?

A. Absolutely, most of them were under seventeen.

MR. BICKEL: I offer into evidence Plaintiff's Exhibits 1 through 6.

MR. ARCHER: Your Honor, I have no objection to Exhibits 2 and 5, but I object to Plaintiff's Exhibits 1, 3, 4 and 6 on the grounds that they are completely irrelevant and immaterial to the issue before this Court and can only serve to lengthen the transcript or, excuse me, the statement of facts.

THE COURT: Well, I don't even know what they are. Will you describe them to me?

MR. BICKEL: I'm sorry, Your Honor. Exhibit 2 is a copy of the ordinance which we attack, it's 1353.

THE COURT: I understand there is no objection [26] to that and that will be admitted.

MR. BICKEL: Exhibit 3 is a copy of the original Complaint filed in the State Court and the Complaint upon which the case was tried in State Court.

Exhibit 4 is the final judgment in the State Court.

Exhibit 5 is a letter from Mr. Elland Archer to me post judgment in State Court of which I will offer as evidence on the conduct of the City of Mesquite and its assurances.

Exhibit 6 is the findings of fact and conclusions of law in the State Court action.

Exhibit 1 is a copy of the zoning ordinance passed by the City of Mesquite permitting our operation and the ordinance 1310, I call it inaccurately the age ordinance, was passed by the City of Mesquite permitting us to or permit-

ting persons less than seventeen years of age to enter without parental supervision.

MR. ARCHER: Your Honor, as I have said there is no objection to 2 and 5, the others are matters that are completely irrelevant to this case. The Court well knows that zoning doesn't permit any particular company or individual to operate anywhere [27] it simply designates what use the land itself may be put to.

As far as the matters in the State Court there is no matter before the State Court before this Honorable Court today and we object to any offer of any exhibits from the State Court case.

THE COURT: I will overrule the objection. I will let them all in.

Q. Mr. Millman, I have handed you what has been marked for identification as Plaintiff's Exhibits 7, 8, 9 and 10, I think, is that correct?

A. That's correct.

Q. Who took those pictures?

A. I did.

Q. Where were they taken?

A. They were taken at the amusement center in Big Town Mall.

Q. The one you were telling us about?

A. The one I was just telling you about.

Q. Was that the evening of February 24, 1977?

A. That's correct.

Q. When those were taken?

A. That's correct.

MR. BICKEL: We offer them. May I have them?

MR. ARCHER: Are you offering them?

[28] MR. BICKEL: We offer them in evidence.

MR. ARCHER: Again, Your Honor, no objection other than they are not material to any matter that has been presented to the Court.

THE COURT: Oh, they will go to the weight.

Q. 11, 12 and 13, were those photographs taken by you?

A. Yes, they were.

Q. What are they pictures of and where were they taken?

A. They are pictures of my store in Town East Mall in Mesquite.

Q. Did you take them on the evening of February 24?

A. The same evening with the camera that I bought that night.

Q. And they show the attendant, I believe, don't they?

A. Right.

MR. BICKEL: We offer 11, 12 and 13 in evidence.

MR. ARCHER: Same objection to materiality.

THE COURT: I will overrule the objection.

Q. In the hundred or so stores that you operate, sir, since, whenever you started, I forget what the record shows, have you ever had any complaint from any [29] police department about your operation?

A. Not a one.

Q. Have you ever had any complaint from anybody about any claim, whether it's true or not, just claiming of trafficing in any kind of dope?

A. Absolutely not.

Q. Have you ever had any claim made, whether true or not, about the trafficing of beer, liquor or wine?

A. Absolutely not. That's why we don't allow any drink of any sort on the premises.

THE COURT: Why don't you offer the pictures? Don't you want the Judge to see them?

MR. BICKEL: Well —

Q. Were you present when it was discussed back in the spring of 1976 about obtaining an exemption from the seventeen-year-old provision?

A. Was I present?

Q. Yes. Why did they exempt your operation from this ordinance that was in effect saying that child under seventeen years could not go into the place unless accompanied by an adult?

A. Because —

MR. ARCHER: We object on the grounds that it calls for speculation of the witness, Your Honor.

THE COURT: Well, is this based on some [30] statement of some officer or official of the City?

Q. You're lost, aren't you?

A. Yes.

Q. The question is were you present when there was a discussion with people from the City of Mesquite?

A. No, I was not. I was not present at that meeting.

Q. You don't know anything about it?

A. I know about it but I was not present.

MR. BICKEL: Okay. Pass the witness.

CROSS EXAMINATION

BY MR. ARCHER:

Q. Would you tell me your name again, I know it, but I have forgotten.

A. Jules.

Q. Jules, okay, and your last name is Millman?

A. Millman, M-i-l-l-m-a-n (spelling).

Q. Mr. Millman, now, you opened on, what, February, was it February 7th?

A. February 5th.

Q. And the ordinance was passed on February 7th is that correct?

A. I believe so.

Q. Okay. That's what you testified to just a moment ago?

[31] A. Right.

Q. Now, isn't it a fact that prior to February the 5th the agenda containing notice of consideration of this ordinance was already posted on the City bulletin board as required by law?

A. I was not aware of it.

Q. You're not suggesting that it wasn't?

A. I just don't know.

Q. Are you aware that there is a three-day posting requirement in the State of Texas to post agendas containing matters to be acted upon by the Council?

A. I reside in Chicago and it was not brought to my attention.

Q. All right. You don't know one way or the other?

A. I really don't know.

Q. You're not suggesting to this Court then that this matter would only be considered after your place was opened?

A. I don't know for a fact.

Q. Was that what you intended to infer to the Court a while ago when you answered your attorney's questions?

A. Excuse me. Repeat that once more.

[32] Q. Was it your intent to infer to the Court that the City Council of the City of Mesquite only considered this matter of the age limit after your establishment opened?

A. I am not saying it was considered after our establishment was open, I never inferred that.

Q. Were you informed by any of your legal staff, either yours or your parent company's that there was consideration of changing the ordinance relating to age limit well before the case was tried in the State Court?

A. I heard something mentioned about it but I really don't remember.

Q. You were aware there was some discussion about it?

A. There was some discussion, vaguely I remember something.

Q. Now, at that time Aladdin's Castle hadn't won its case in the State Court against the City of Mesquite?

A. No, we had not.

Q. Now, you say you operate in many other cities, has the City Council in any of these other cities ever changed any of their ordinances?

A. After we have been in operation?

[33] Q. Yes.

A. Not to my knowledge.

Q. Well, have they changed any of their other ordinances?

A. Well, if they changed ordinances not relating to us I wouldn't be aware of it.

Q. Have you ever heard of a City changing an ordinance?

A. Yes, I have.

Q. So you weren't completely unaware that cities sometimes do change ordinances?

A. No, cities have a right to change an ordinance in certain circumstances I imagine.

Q. You knew when you put in your operation here that there was some possibility that the City of Mesquite might change some of its ordinances, did you not?

A. I was almost a hundred percent confident that when we started building our store that they changed the ordinance for us because we were at the Council meeting. They changed the ordinance on the seventeen-year-old law for us. And they changed the zoning for us. I had not fear whatsoever that the City would reverse its decision and put these ordinances in.

[34] Q. Was that ordinance passed by unanimous vote or divided Council vote?

A. Uh, I was not present, but I understand that it was a unanimous vote. This is my understanding.

Q. Were you told that Mr. B. J. Smith voted in favor of the ordinance sustaining the seventeen-year-old ordinance and/or the zoning ordinance?

A. I was not there.

Q. You had not heard there was some opposition to changing either of these ordinances or both?

A. The only thing that I heard was when the newspaper reporter called me, I don't recall her name, stating that the ordinance was passed, that the seventeen-year-old law ordinance was reinstated. That's the only time I heard of it and then I called in my attorneys.

Q. You're a businessman who has to deal with cities throughout the country, is that correct?

A. That's correct.

Q. So you have some understanding of the operation of cities, city government, do you not?

Yes, I do.

Q. You're aware, are you not, that sometimes when there is divided sentiment on the Council that it can go one way or the other?

A. Yes, I am.

[35] Q. And you made no effort to determine whether or not the sentiment on the Council was divided or whether it was unanimous?

A. I don't know.

Q. You don't know. You didn't really rely a whole lot on what the Council did, did you?

A. Well, at the initial time, I know the initial time we were before the Council, I know it was unanimous that they would not grant us our license.

Q. Yes. But I am talking about the ordinance allowing Aladdin's Castle to be the only place in town that could have six-year-old children playing pinball machines, did you believe or did somebody tell you that that was unanimous?

A. No.

Q. And you're aware that it either was or it could have been by a divided vote?

A. It could have been.

Q. All right. So if it could be a divided vote then you, as a businessman, experienced in dealing with cities had some reason to expect that there was some possibility that those opposing the ordinance might very well prevail in the future and get the others to go along with changing it, isn't that correct?

A. It never entered my mind at the time due to [36] the fact that this was done for us. It just never entered my mind that the City would go back and reverse it two days after we opened.

Q. You testified just a moment ago that you had never had any what, any complaint from a police agency that — what was your testimony, I have forgotten?

A. To the best of my knowledge I have never received a complaint from a police department that there has been a problem in any of our stores.

Q. Did you receive a letter from Cleo Frank, Chief of Police of the City of Sheboygan, Wisconsin or do you recall?

A. I don't recall ever seeing that letter.

Q. Is that the letter that you submitted to the City secretary in the hearing held on the license application of Aladdin's Castle either through yourself or your attorneys?

A. Probably so in the sense that we have written letters to police departments asking them from time to time on the running of our operation if there is anything we should

know because we are anxious to cooperate with the police departments. That was probably one of the letters sent to our office or sent to me in response to that, I don't know for certain that this was in the evidence but I assume that probably it was.

[37] Q. Does it not say "At the most I can only identify an isolated incident or two of having been called to remove an unruly person"?

A. It does.

Q. It does say other things and you're quite welcome to read it.

A. The thing is this is a letter that we solicit. The police department, if there was an incident, never called us on the incident, and even as this letter states the incident was so minor they never called us. This is a solicited letter and the incidents were insignificant and were not brought to out attention.

Q. When you say "never" you mean almost never? Well, he did make a complaint in this letter, didn't he?

A. He stated something in the letter that was not stated to me at the time the complaint was made because the complaint was insignificant. It was not significant enough for the police department to issue a complaint and contact our office or our manager or anybody else. When we inquired of the police department, they checked their records and they stated the facts that were on their records and that's what the letter says.

[38] MR. ARCHER: I will pass the witness.

MR. BICKEL: No further questions, Your Honor.

THE COURT: You may step down.

MR. BICKEL: We rest, Your Honor.

THE COURT: All right.

MR. ARCHER: Your Honor, at this time we have witnesses here but it's obvious they have made no showing whatever to justify injunctive relief and we would like to ask that the Court deny the application for preliminary injunction and save time.

THE COURT: Well, I will deny that motion.

MR. ARCHER: We will call Sgt. Smith.

JIMMY W. SMITH,
called as a witness in behalf of the Defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ARCHER:

Q. State your name, please.

A. Jimmy W. Smith.

Q. How are you employed?

A. As a police officer for the City of Mesquite.

Q. How long have you been so employed?

A. Approximately twelve years.

[39] Q. State in what capacity you have been employed giving the approximate time to the best of your recollection.

A. I have been in the crime prevention area for the past six months. Preceding that I was a patrol supervisor for about a year. Preceding that I was in the plain clothes division of the police department, part of that time period being as juvenile officer and working in that area, that comprised about two and a half years.

Q. Two and a half years as juvenile officer?

A. Yes, sir, or dealing at least with juveniles.

Q. All right. Could you describe the nature of your work with juveniles as an officer or in your work dealing with juveniles whatever it is?

A. Yes, sir. In investigation of offenses involving juveniles, working with youngsters in regard to truancy and matters of that nature.

Q. Now, what period of time was this that you worked with juveniles?

A. Approximately from 1973 to 19 — 1972 to about 1974.

Q. All right. Then, was it after that that you worked patrol?

A. Yes, sir.

[40] Q. And in patrol did you have any dealings at all with juveniles?

A. Yes, sir.

Q. What was your position in patrol?

A. As a patrol supervisor.

Q. All right. You had how many squad cars under your supervision?

A. Usually five or six at any given time.

Q. Did that include all of the patrol squads of the City on a given shift?

A. Yes, it did.

Q. So were you responsible for all of the patrol activity on any particular shift that you might work?

A. Yes, sir, that's correct.

Q. And that lasted until what approximate date?

A. Until 1975, mid-1975.

Q. All right. Are you aware of any coin-operated establishments or coin-operated establishments or pinball places in the City of Mesquite?

A. Yes, sir, but primarily those that exist, some do not not exist at the present time.

Q. Either that exist now or existed during the period of time that you began working with juveniles up until the time you terminated your patrol work?

[41] A. Yes, sir.

Q. Could you estimate approximately how many that you had official dealings with as a part of your police work?

A. I believe three or four locations.

Q. Would you list some of those places and their approximate locations?

A. One, the primary point of problems to us was the Fun Safari located on South Galloway in Mesquite near Mesquite High School and then the Pizza Spa located on Tradewind Drive which was to some degree in close proximity to North Mesquite.

Q. What, if any, problems of law enforcement did you encounter involving these places and persons under seventeen years of age?

A. The biggest problem I encountered was that of truancy.

Q. Could you describe for the Court what truancy problems you encountered?

A. Yes, sir. During school hours we continually found youngsters that were supposed to be at school engaged in play or engaged in the operation of amusement machines.

Q. Now, was this just on isolated occasions?

A. No, sir, for the most part it was every day [42] at least while I was in the juvenile area. I encountered the situations nearly every single day.

Q. Tell the Court then if this was a substantial problem in your work?

A. Yes, sir, it was.

Q. Could you give any estimate of the numbers that you say you might deal with in a given day or what would be a typical day?

A. In a typical day perhaps two or three youngsters being picked up that I knew to be definitely truants and returning those students to school.

Q. What other problems?

A. On one or two occasions of my own knowledge I found evidence of drug use in the restrooms at one of the establishments or what appeared to be drug use, a needle syringe, what I considered to be drug paraphernalia.

Q. Did you or any of your officers under your supervision ever make any arrests of juveniles for drugs or other charges?

A. I am not aware of any specific incident like that.

Q. Your testimony is then you don't recall?

A. No, sir, I don't recall any specific incidents.

[43] Q. Based upon your experience in this work as juvenile officer, in your work with the juveniles, do you have an opinion as to whether or not the operation of pinball machines that allows those under seventeen years of age to play is detrimental to law enforcement and/or

creates problems for law enforcement, in particular truancy work, in the City of Mesquite?

A. I feel it is, yes.

MR. ARCHER: Pass the witness.

CROSS EXAMINATION

BY MR. BICKEL:

Q. Officer Smith, Sgt. Smith, I am sorry.

A. Yes, sir.

Q. Sergeant, you named three locations.

A. Yes, sir.

Q. Were these located on a street as distinguished from in a shopping mall, do you follow me?

A. One was in a shopping center.

Q. Which one was that?

A. The Fun Safari.

Q. What shopping center was that?

A. It was in the Mesquite Central Shopping Center. The Pizza Spa was in a small shopping center that was not really formally named.

[44] Q. I want to get your testimony straight. Now, you said that two or three children or boys a day would be in these places and not in school, is that what your testimony was?

A. Yes, sir.

Q. Are you telling the Court that if those places had not existed those boys would have been in school? You're not telling the Court that?

A. I can't say that, no, sir.

Q. Of course not.

A. I can only say that those particular people that we found at those locations were in fact truant and something appeared to bring them to that area. We didn't find this congregation at other places.

Q. All right. I am unclear as to your testimony about the drug paraphernalia, what is your testimony about that?

A. My testimony is at least on one occasion I found what I considered to be drug paraphernalia in one of the restrooms at a time when we were checking the location for truancy.

Q. What restroom?

A. The Fun Safari.

Q. Okay. Is the Fun Safari still in operation?

A. It is not.

[45] Q. When did it go out of operation?

A. I am not sure, sir.

Q. A couple of three years ago?

A. About a year ago.

Q. Did you know that my client's place of business does not have restrooms?

A. No, I am not familiar with your client's situation.

Q. Have you, Sergeant, talked to any member of the City Council about this matter, any member?

A. No, sir. As a rule, I don't talk to the City Council about police problems.

Q. You never have?

A. To my knowledge I don't ever recall talking to a City Council member. I keep my problems within the department, I let the Chief do the talking to the Council.

Q. Are you familiar with the place located in Big Town called Fun City or something like that?

A. I am aware of it, yes, sir.

Q. What is it?

A. It's an area designated there and I believe they have amusement machines, I'm not sure of just what type.

Q. You have seen it before?

[46] A. I have seen it, yes, sir.

Q. Have you ever had any trouble with it?

A. I have not had trouble with it.

MR. BICKEL: Nothing further. Thank you.

MR. ARCHER: That's all I have.

THE COURT: You may step down.

MR. ARCHER: We'll call Officer Carruthers.

MARGARET CARRUTHERS,

called as a witness in behalf of the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ARCHER:

Q. State you name, please.

A. Margaret Carruthers.

Q. How are you employed?

A. Police officer for the City of Mesquite.

Q. How long have you been so employed?

A. I've been a police officer since October of 1970.

Q. How long have you been with the City of Mesquite?

A. Since May of 1966.

Q. Now, was there some period of time that you did a certain type of work that you were not classified [47] as a police officer but you did that you considered in the nature of police work for some length of time prior to 1970?

A. Yes.

Q. What was the nature of that work?

A. From 1966 to 1970 I was a dispatcher.

Q. Well, but at what time did you begin work with juveniles?

A. 1970, in May of 1970.

Q. All right. And that continued until what time?

A. June of 1975.

Q. Approximately five years. And what was the nature of your work that you have done, Officer, what was your title, if you had one?

A. I was juvenile officer.

Q. What were your duties, juvenile duties?

A. I handled offenses involving juveniles as victims and as suspects.

Q. As a part of your duties, were you aware of coin-operated machine establishments and pinball machine places whether they were called that or not in the City of Mesquite?

A. Yes sir.

Q. Could you estimate about how many that you [48] were aware of and actually worked in connection with those places during your period of employment as juvenile officer?

A. Okay. I can think of three places. Now, as far as how many owners each of them had I don't know, I couldn't tell you. I know each of them went through several owners but there were three different locations in the City.

Q. You're talking about now those that are coin- operated machine establishments, is that correct?

A. That's correct.

Q. What about other places that were not classified as coin-operated establishments but had pinball machines or other type of coin-operated machines, are there quite a few of those?

A. You mean like the 7-Eleven store or something like that?

Q. Cafes, restaurants, or what have you?

A. Uh, I would say there is a few but I don't think there is a large number.

Q. All right. Now, as a part of your work as a juvenile officer did you find any problem related to persons under seventeen years of age at these type of establishments?

A. All three locations, establishments that were [49] coin-operated establishments in itself were a constant problem for the Juvenile Division.

Q. Would you describe the nature of these problems?

A. Okay, the biggest problem was truancy. We were constantly picking up truants out of the establishments and taking them back to school. That would be by and far the largest problem. Then we had just a constant problem with

runaways, parents complaining their children spend their lunch money there. Parents complaining that their children were staying there at night. I would say that I got at least one complaint a day on these establishments, then lots of times there were a lot more than that, but to average it out, I would say at least one.

Q. Could you give the Court some idea of the number of truants you might find on a particular day in the different pinball machine or coin-operated machine establishments, I don't mean every day, just a typical day?

A. I would say it would probably average two to three.

Q. Per day?

A. Any time we chose to go in and check students.

Q. Is it possible you checked more than once a [50] day, you know, there were other things we had to do. We couldn't check every day and it was rare that we would check twice a day. Normally we tried to, whenever we had time, we went by and checked.

Q. Was there sometimes more and sometimes less?

A. Yes.

Q. Are you telling the Court that the problem was substantial?

A. Yes, sir.

Q. Substantial as you understand it, it substantially affected your work?

A. All I can tell you is that it was a common problem and that we commonly stopped whenever we had time to stop. If we were in the area we stopped and checked, that's how common the problem was.

Q. Tell the Court something about the runaways that you mentioned, do you recall any incidents?

A. Well, this is one place that runaways could go and a runaway needs some place to go where they can hang around. They don't always have a place to go. They could go there and stay all day and not stand out like a sore thumb. If they hang around other areas, you know, someone is going to notice them and call the police. They could go there and also make other contacts to get them something to eat or money from [51] other students and so forth.

Q. What age people are you talking about, these runaways?

A. Thirteen to sixteen.

Q. Did you encounter any substantial number of these cases of runaways?

A. Yes.

Q. Could you give the Court some idea of what you mean by substantial number? I realize you don't recall the exact number, but could you give the Court some kind of an estimate?

A. It would be hard to put a figure on it because, you know, they are there. As far as putting an exact number on the arrests made or anything like that it would be difficult for me to give you a number. I can just tell you that it was like we were over there checking for them and they would say, well, so and so is here or they just left or we would find them there. Their parents would come in and say I went in the front door and they ran out the back, this kind of thing.

Q. Based upon your experience, your five years experience as a juvenile officer, do you have an opinion as to whether or not the operation of these coin-operated machine establishments in the City of [52] Mesquite and the attendance of those under seventeen at those places

substantially, is substantially detrimental to law enforcement and school attendance? Do you have an opinion one way or the other?

A. It presents a very serious problem for juvenile law enforcement people to handle.

Q. Do you have an opinion as to whether or not it is detrimental to school attendance?

A. Yes, very definitely.

MR. ARCHER: Pass the witness.

CROSS EXAMINATION

BY MR. BICKEL:

Q. Why don't you close them down?

A. Well, you have to have a reason to close them. We did try to work with the people and ask them. Like, a big problem was students going before school and they would get in their playing the machines and they just didn't go to school. Maybe they had intended to go to school but they would get there and start playing and decide not to go. And finally many of them we did close down.

Q. You left some of them open?

A. I think there is — well, there is not any that I know of just strictly pinball establishments now [53] left.

Q. Would it shock you to know there was one in operation?

A. At Town East Mall?

Q. In Big Town.

A. No, it would not shock me. No. I know there is.

Q. Well, there is one that has been going on for ten years, right?

A. I don't know how long it's been there.

Q. You've been with the police department that long and it's been going on for at least seven years since you have been active?

A. Not to my knowledge.

Q. You don't know?

A. No.

Q. I want to say right now that I want the City of Mesquite to enforce every single ordinance that it thinks ought to be enforced for the health and safety of its children. I want to make that clear. But I want you to tell me whether or not there is any reasonable relationship, any reasonable relationship between my client's operation, which is in operation in fact in Town East Mall, and crime of any kind under oath.

A. I'm not sure I understand the question.

[54] Q. Let me ask you if there is any —

A. Mr. Archer asked me my opinion and I am no longer in the juvenile division, I'm not in contact with those particular type of problems.

Q. That's what His Honor wants to know, you see?

A. At this point right now I am in patrol, but when I was in the juvenile division the establishments that were in operation at that time were a constant large volume headache and problem.

Q. They may have been a headache and problem but I am asking about whether or not it was —

A. And it was detrimental to our juveniles.

Q. The question is is there any reasonable relationship with the operation of those businesses and crime of any type?

A. Truancy, juvenile delinquency, drugs, alcohol, fights.

Q. Truancy, drugs, alcohol, fights?

A. All of those were at those locations.

Q. You're telling me if those locations had not existed those children would have been in school, is that what you're saying?

A. I believe that some of those children would have been in school, yes, sir.

Q. Are you telling me if those locations had not [55] been in existence those children would not have come into contact with drugs or alcohol, is that what you're saying?

A. Okay, can I explain? Can I answer your question?

Q. Yeah.

A. Okay, if you have a house, you can lock it up, but a burglar can get into it, but he's going to go to a place that is the easiest to get into. If your house is locked securely he would rather go into the house next door that's unlocked. That's how I feel. No, doing away with pinball machines is not going to do away with truancy.

Q. Of course not.

A. And runaways and drugs and everything else.

Q. Of course not.

A. But it does flourish at those locations.

Q. Is there smoking and drinking or was it and eating permitted at those locations that you have reference to that you dealt with when you were in juvenile work?

A. Yes, sir.

Q. It was permitted?

A. Yes, sir.

Q. All right. Was there a supervisor or manager [56] I ought to say in charge of those places? Do you follow me? Have I made my question clear?

A. Most of them. At some point perhaps there was just an employee but a great deal of the time the owner was at the establishment. Okay.

Q. Yeah. I wanted to find out whether they were supervised, you see? Were they or weren't they?

A. You're going to have to — in my opinion they were not supervised but it's just a matter of what you call supervised.

Q. Was there an adult there?

A. The owners were adults.

Q. Were they present?

A. Yes, sir.

Q. And still these fights would go on?

A. Yes, sir.

Q. Now, then, have you talked to any member of the City Council about this?

A. No, sir.

MR. BICKEL: No further questions.

MR. ARCHER: That's all we have from this witness.

THE COURT: All right.

MR. ARCHER: At this point we rest.

MR. BICKEL: Officer Drew as an adverse [57] witness.

WILLIAM C. DREW,

called as a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BICKEL:

Q. State your name, please, sir.

A. William C. Drew.

Q. You are a detective sergeant, I believe, with the City of Mesquite Police Department, sir?

A. Yes, sir.

Q. I believe you were the investigating officer with reference to the issuance of the license to Aladdin's Castle in 1976?

A. Yes, sir.

Q. You were a witness at the trial in January of this past year when it was tried in State Court, is that correct?

A. Yes, sir.

Q. Is it true that you told me in the hall that if Aladdin's Castle or my clients had been attempting to open a clothing store that it wouldn't have made any difference, didn't you tell me that?

A. I don't recall that.

[58] Q. But your main objection was just pinball machines, period, did you tell me that?

A. I don't specifically remember saying that.

Q. Well, you don't like them, do you?

A. Just pinball machines?

Q. Right.

A. I really have nothing against pinball machines.

MR. BICKEL: No further questions.

MR. ARCHER: No questions.

THE COURT: All right.

MR. BICKEL: We rest, Your Honor.

MR. ARCHER: I might ask one other question that I neglected to ask.

THE COURT: All right.

CROSS EXAMINATION

BY MR. ARCHER:

Q. You testified you had no objection to what, to pinball machines, is that what your answer was?

A. I believe he asked me if I liked pinball machines.

Q. Could you tell me what you meant by your answer, I'm not sure I know what you mean.

A. I'm not entirely sure what he meant by the question. My impression was did I have anything personally against pinball machines and I don't have [59] anything personal against a pinball machine.

Q. Well, confining the question to the content of what's being discussed here in your presence, pinball machines in the City of Mesquite for use, for people to put coins in and play them, do you have any objections to that in the City of Mesquite?

A. Yes, sir, I do.

Q. When did you reach that feeling or objection?

A. I have had it for several years.

Q. Before you ever heard of Aladdin's Castle?

A. Yes, sir.

Q. Why do you object to them?

A. Because of my experience as a police officer.

Q. Well, what has your experience as a police officer shown you that would cause you to object to them?

A. Calls of disturbances at the pinball machine establishments and my personal experience at these places.

Q. Could you relate any specific incidents that you can think of?

A. I have answered several when I was in the Patrol Division. I answered several fight calls they had. Establishments called. The Fun Safari and I have also made a narcotics arrest at the Fun Safari.

[60] Q. Did you and Sgt. Robertson come to my office two or three years ago and talk to me about trying to close this Fun Safari place down?

A. I don't believe I was in on that, I was aware of the problem.

Q. Okay. Did you concur in that desire?

A. Yes, sir.

Q. Now, at that time had you ever heard of Aladdin's Castle?

A. No sir.

Q. Did you have any indication they were going to file any lawsuit against the City of Mesquite?

A. No, sir.

MR. ARCHER: Pass the witness.

MR. BICKEL: Nothing further, Your Honor.

THE COURT: All right.

MR. BICKEL: We rest.

THE COURT: You may step down.

MR. ARCHER: At this time we rest.

THE COURT: All right.

[65] MR. ARCHER: *Murphy versus California* is 225 U.S. 623, 32 Supreme Court, 697, 56 Lawyer's Edition 1229. The *Murphy versus California* case simply held that this was a part of the police power of the states and that as long as there was any rational basis for the existence of such a statute the wisdom of the statute was not an issue. I think that certainly there is a rational basis or at least an arguable basis for contending or requiring a parent or a guardian when those under seventeen years old play these potential gambling machines. We're not contending that any gambling has taken place, we don't know whether any has or not.

THE COURT: We can gamble on pitching pennies at the crack.

MR. ARCHER: I understand that.

THE COURT: Kids can do that. Do you keep them off the sidewalk because they might gamble by pitching pennies at the crack?

MR. ARCHER: Your Honor, I am going by what the cases have held for the last hundred years. I realize that you can bet on the outcome of this lawsuit.

[66] THE COURT: Sure.

MR. ARCHER: But I don't think you could ban lawsuits just because someone might bet on them. I think it has to do with the tendency to attract that sort of thing. Sure, I realize you can bet on anything, but you and I both know when people play these machines there is some possibility that they are going to feel like betting back and forth. But that's not the major part of my argument, I simply said that the Courts have held that this type of machine can either be banned or regulated.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Caption Omitted in Printing)

I, Norma G. McGaughy, City Secretary of the City of Mesquite, Texas, hereby certify that the attached are true copies of Ordinances Nos. 1103, 1310, 1314 as adopted by the City Council of the City of Mesquite, Texas.

NORMA G. MCGAUGHY

Norma G. McGaughy
City Secretary
City of Mesquite, Texas

EXHIBITS OFFERED AT PRELIMINARY HEARING

(Offered at A.J. 40; P. 26, Transcript of Proceedings in Preliminary Injunction Hearing — Admitted at A.J. 41; P. 27, Transcript of Proceedings in Preliminary Injunction Hearing)

ORDINANCE NO. 1314

APPLICATION 1095-11

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF 1973, DULY PASSED BY THE CITY COUNCIL ON SEPTEMBER 4, 1973, SO AS TO GRANT A CONDITIONAL USE DESIGNATION FOR AN INDOOR COMMERCIAL RECREATION FOR COIN-OPERATED AMUSEMENT MACHINES WITHIN THE TOWN EAST MALL WITH THE STIPULATIONS THAT THE

OPERATION IS TO BE CONDUCTED AS PRESENTED AT THE PUBLIC HEARING; OTHERWISE THE LICENSE WOULD BE WITHDRAWN; OTHER STIPULATIONS SHALL INCLUDE THAT SUPERVISORS, AGE 25 YEARS OR OLDER APPROVED BY THE CHIEF OF POLICE, SHALL BE ON DUTY AT ALL TIMES, AND THAT THRE SHALL BE NO SALE OR CONSUMPTION OF FOOD OR DRINK, AND SMOKING AND GAMBLING SHALL NOT BE ALLOWED ON THE PREMISES; SAID PROPERTY BEING LOCATED IN THE JOHN T. NELMS SURVEY, TRACT 3, ABSTRACT 1095, CITY OF MESQUITE, DALLAS COUNTY, TEXAS, AND BEING MORE FULLY DESCRIBED IN EXHIBIT "A" AS ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE; BY REPEALING ALL ORDINANCES IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE AND RETAINING IN FULL FORCE AND EFFECT ALL PROVISIONS OF THE 1973 ZONING ORDINANCE TO THE LAND HEREWITH ZONED; BY PROVIDING FOR A SEVERABILITY CLAUSE; BY PROVIDING FOR A PENALTY NOT TO EXCEED TWO HUNDRED DOLLARS ($200.00) FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

WHEREAS, the City Planning Commission of the City of Mesquite and the governing body of the City of Mesquite in compliance with the Charter of the City of Mesquite and State laws with reference to granting of zoning changes under the Zoning Ordinance Regulations and Zoning Map, have given the requisite notices by publication and otherwise and, after holding due hearings and affording a full and fair hearing to all property owners generally and to the persons interested and situated in the area, the City of Mesquite is of the opinion that the said change of zoning should be granted herein:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the Comprehensive Zoning Ordinance of 1973, duly passed by the City Council of the City of Mesquite, Texas, on the 4th day of September, 1973, be, and the same is, hereby amended by amending the Zoning Map of the City of Mesquite so as to grant a conditional use designation for an indoor commercial recreation for coin-operated amusement machines within the Town East Mall with the stipulations that the operation is to be conducted as presented at the public hearing; otherwise the license would be withdrawn; other stipulations shall include that supervisors, age 25 years or older, approved by the Chief of Police, shall be on duty at all times, and that there shall be no sale or consumption of food or drink, and smoking and gambling shall not be allowed on the premises; said property being located in the John T. Nelms Survey, Tract 3, Abstract 1095, City of Mesquite, Dallas County, Texas and being more fully described in Exhibit "A" as attached hereto and made a part of this ordinance.

SECTION 2. That all ordinances, or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed.

To the extent that such ordinances or portions thereof not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That the property described in Section 1 of this ordinance, shall be used only in the manner and for the purposes provided for by the Comprehensive Zoning Ordinance of 1973.

SECTION 4. That should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal, or unconstitutional and shall not affect the validity of the Comprehensive Zoning Ordinance of 1973 as a whole.

SECTION 5. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of 1973, of the City of Mesquite, and upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Hundred Dollars ($200.00) for each offense.

SECTION 6. Whereas, the property described in Section 1 of this ordinance requires that it be given the above classification in order to permit its proper development and in order to protect the public interest, comfort, and general welfare of the City of Mesquite, creates an urgency and an emergency for the preservation of the public health, safety, and welfare and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 5th day of April, A.D., 1976.

BOB BEARD

Bob Beard
Mayor

ATTEST:

NORMA G. MCGAUGHY

Norma G. McGaughy
City Secretary

APPROVED AS TO FORM:

Elland Archer
City Attorney

EXHIBIT "A"

This property is located on the southeast corner of the intersection of I.635 and Town East Blvd. within the Town East Mall building.

ORDINANCE NO. 1310

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 5B, SECTION 7, OF THE CITY CODE BY ESTABLISHING CERTAIN STANDARDS WHEREIN IT SHALL NOT BE UNLAWFUL FOR THOSE UNDER SEVENTEEN (17) YEARS OF AGE TO PLAY OR OPERATE A COIN-OPERATED AMUSEMENT MACHINE.

WHEREAS, certain patrons of major shopping centers desire to leave their children unattended at coin-operated amusement establishments while shopping; and

WHEREAS, coin-operated amusement establishments have been and will be constructed that will accommodate same;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That Chapter 5-B, Section 7, of the City Code is hereby amended by adding the following, in all other respects to remain in full force and effect:

> "Provided, however, that coin-operated establishments located in major shopping centers containing an enclosed mall and said establishments being operated only during the hours said mall is open and having no outside entrance and where said establishments does not offer for sale or allow the consumption of food, drink or other merchandise, the foregoing provision shall not be applicable and provided, further, that children under seven (7) must be accompanied by an adult."

SECTION 2. That all ordinances, or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed. To the extent that such ordinances or portions

thereof not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any paragraph, sentence, subdivision, clause, phrase, section or provision of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be invalid, illegal, or unconstitutional and shall not affect the validity of the remainder of Section 5-B, Chapter 7, or any other provision of the Code of the City of Mesquite.

SECTION 4. That any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Hundred Dollars ($200.00) for each offense.

SECTION 5. The fact that the present ordinances of the City of Mesquite are inadequate to properly control these establishments in the City of Mesquite, creates an urgency and an emergency and in the preservation of the public health, safety and welfare and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 5th day of April, A.D., 1976.

BOB BEARD

Bob Beard
Mayor

ATTEST:

NORMA G. MCGAUGHY

Norma G. McGaughy
City Secretary

APPROVED AS TO FORM:

Elland Archer
City Attorney

ORDINANCE NO. 1103

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, REGULATING AND ESTABLISHING A LICENSE FEE FOR COIN-OPERATED AMUSEMENT MACHINES AND COIN-OPERATED AMUSEMENT ESTABLISHMENTS; PROHIBITING THE OPERATION OR DISPLAY THEREOF WITHOUT A LICENSE; PROHIBITING THE PLAYING OR OPERATION OF COIN-OPERATED AMUSEMENT MACHINES BY PERSONS UNDER SEVENTEEN (17) YEARS; PROVIDING EXCEPTIONS; PROVIDING FOR REVOCATION OF LICENSE; PROVIDING A RIGHT AND MANNER OF APPEAL; PROVIDING CERTAIN DEFINITIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED TWO HUNDRED DOLLARS ($200.00) FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. It is hereby declared to be unlawful to own, display or operate coin-operated amusement machines or apparatus in the City without a license issued by the City of Mesquite therefor.

SECTION 2. It is hereby declared to be unlawful to own, operate or maintain a coin-operated amusement establishment in the City without a license issued by the City of Mesquite therefor.

SECTION 3. It shall be unlawful for any owner, operator or displayer of coin-operated amusement machines to allow any person under the age of seventeen (17) years to play or operate a coin-operated amusement machine unless such minor is accompanied by a parent or legal guardian.

SECTION 4. *License*: Any person desiring to obtain a license for a coin-operated amusement machine may apply to the Assessor Collector of Taxes of the City of Mesquite on a form to be furnished by the City showing the type of machine to be licensed, serial number, location, name of establishment and name of the owner or person in control of such machine together with the name and title of person making the application if other than the owner.

Upon payment of the license fee the Assessor-Collector shall issue a license which shall be valid for such machine for one (1) year.

Any person desiring to obtain a license for a coin-operated amusement establishment shall apply to the City Secretary by original and five (5) copies, one of which shall be routed to the City Manager, Chief of Police, Chief Building Inspector and City Planner, for review.

Upon approval by each of the parties and payment of the license fee, the City Secretary shall issue a license for such establishment, which shall be valid for one (1) year and shall be non-transferrable.

The Chief of Police shall make his recommendation based upon his own investigation of the applicant's character and conduct as a law abiding person and shall consider past operations, if any, convictions of felonies and crimes involving moral turpitude and connections with criminal elements, taking into consideration the attraction by such establishments of those of tender years.

The Chief Building Inspector and City Planner shall determine compliance with applicable building and zoning ordinances of the City.

When the City Manager has received the recommendations from the Chief of Police, Chief Building Inspector and City Planner, he shall review such application together

with such recommendations as may be furnished and shall approve such application or disapprove same with written notation of his reasons for disapproval.

Upon disapproval, the applicant may make such corrections as noted and request approval, request withdrawal and refund of license fee, or give notice of appeal from the City Manager's decision.

In the event of appeal from the City Manager's decision the applicant shall give written notice of his intention to appeal within ten (10) days of notice of the City Manager's decision. Such appeal shall be heard by the City Council within thirty (30) days from date of such notice unless a later date is agreed upon by applicant.

Upon hearing the Council may reverse the decision of the City Manager in whole or in part or may affirm such decision.

An applicant may appeal such decision to the District Court within thirty (30) days but such appeal shall be upon the substantial evidence rule.

For violation of any of the requirements of this ordinance, the City Manager may upon three (3) days notice of Licensee revoke the license granted hereunder. The same rights of appeal shall exist upon revocation as upon disapproval of the original application.

A person licensed hereunder, by acceptance of such license authorizes the City and its designated personnel to make inspection of the premises, facilities, manner of operation and character of any employee.

The holder of a license hereunder shall comply with all ordinances and requirements of the City of Mesquite and all laws of the State of Texas.

SECTION 5. There is hereby levied a license fee of Ten Dollars ($10.00) for each coin-operated amusement machine and a license fee of One Hundred Dollars ($100.00) for each coin-operated amusement establishment in the City.

The license of a coin-operated amusement establishment shall not exempt the owner or operator from the license fee of individual machines or obediance to any other ordinance of the City of Mesquite, including the prohibition of pool halls.

SECTION 6. *Exceptions*: This ordinance shall not apply to any agency of the United States Government, State of Texas or political subdivision thereof.

Any charitable organization operating or displaying such machines in connection with charitable activities on premises exempt from payment of ad valorem taxes under State law because of such charitable activities shall be exempt from the provisions of this ordinance to such extent.

SECTION 7. *Definitions:* For the purpose of this ordinance the following words and terms are defined as follows:

Coin-Operated Amusement Machine — Means a machine or apparatus that may be played or operated by the insertion of a coin and on which games or tests of skill, chance or ability are played, including pinball machines, and any machine initiating games of sport, shooting, or guiding objects or any machine designed for amusement or relaxation, but not including machines for vending food, drink and tobacco products, music playing or recording or apparatus commonly known as kiddie rides.

Coin-Operated Amusement Establishment — Means any business or commercial establishment or other building or location wherein three (3) or more coin-operated amusement machines are displayed.

SECTION 8. That should any paragraph, sentence, subdivision, clause, phrase, section or provision of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be unconstitutional, illegal or invalid and shall not affect the validity of any other provision of the Code of the City of Mesquite.

SECTION 9. That any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction in Corporation Court shall be subject to a fine not to exceed Two Hundred Dollars ($200.00) for each offense.

SECTION 10. The fact that the City of Mesquite has no adequate ordinance regulating the operation of coin-operated machines or establishments wherein such machines are located in the City creates an urgency and an emergency and in the preservation of the public health, safety and welfare of its citizens requires that this ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 19th day of March, A.D., 1973.

GEORGE BOYCE

George Boyce
Mayor

ATTEST:

NORMA G. MCGAUGHY

Norma G. McGaughy
City Secretary

APPROVED AS TO FORM:

ELLAND ARCHER

Elland Archer
City Attorney

ORDINANCE NO. 1353

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, REPEALING ORDINANCE NUMBER 1310 OF THE CITY OF MESQUITE AND AMENDING ORDINANCE 1103 OF THE CITY OF MESQUITE BY PROVIDING REGULATION OF AND ESTABLISHING A LICENSE FEE FOR COIN-OPERATED AMUSEMENT ESTABLISHMENTS; PROHIBITING THE PLAYING OR OPERATION OF COIN-OPERATED AMUSEMENT MACHINES BY PERSONS UNDER SEVENTEEN (17) YEARS; PROVIDING EXCEPTIONS; PROVIDING FOR REVOCATION OF LICENSE; PROVIDING A RIGHT AND MANNER OF APPEAL; PROVIDING CERTAIN DEFINITIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED TWO HUNDRED DOLLARS ($200.00) FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

WHEREAS, coin-operated amusement establishments have a tendency to attract patrons of tender years, and

WHEREAS, the congregation of youthful patrons creates problems of policing due to the need to protect such patrons from the influences of those who would promote gambling, sale of narcotics and other unlawful activities; and

WHEREAS, it is vital to the safety and welfare of the inhabitants of the City of Mesquite and particularly those of tender years for whom a special duty is imposed upon the governing body to protect, that proper and suitable operators only are licensed to operate coin-operated amusement establishments and that such establishments be regulated to that end; and

WHEREAS, it has been determined that the attraction of such establishment for those under seventeen (17) years of

age is detrimental to such persons and to the health and welfare of the inhabitants of the City, generally.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That Ordinance Number 1310 of the City of Mesquite passed on the 5th day of April, 1976, is hereby repealed.

SECTION 2. That Ordinance 1103 is hereby amended to read as follows:

SECTION 3. It is hereby declared to be unlawful to own, display or operate coin-operated amusement machines or apparatus in the City without a license issued by the City of Mesquite therefor.

SECTION 4. It is hereby declared to be unlawful to own, operate or maintain a coin-operated amusement establishment in the City without a license issued by the City of Mesquite therefor.

SECTION 5. It shall be unlawful for any owner, operator or displayer of coin-operated amusement machines to allow any person under the age of seventeen (17) years to play or operate a coin-operated amusement machine unless such minor is accompanied by a parent or legal guardian.

SECTION 6. *License:* Any person desiring to obtain a license for a coin-operated amusement machine may apply to the Assessor Collector of Taxes of the City of Mesquite on a form to be furnished by the City showing the type of machine to be licensed, serial number, location, name of establishment and name of the owner or person in control of such machine together with the name and title of person making the application if other than the owner.

Upon payment of the license fee the Assessor-Collector shall issue a license which shall be valid for such machine for one (1) year.

Any person desiring to obtain a license for a coin-operated amusement establishment shall apply to the City Secretary by original and five (5) copies, one of which shall be routed to the City Manager, Chief of Police, Chief Building Inspector and City Planner, for review.

Upon approval by each of the parties and payment of the license fee, the City Secretary shall issue a license for such establishment, which shall be valid for one (1) year and shall be non-transferrable.

The Chief of Police shall make his recommendation based upon his investigation of the applicant's character and conduct as a law abiding person and shall consider past operations, if any, convictions of felonies and crimes involving moral turpitude and connections with criminal elements, taking into consideration the attraction by such establishments of those of tender years.

The Chief Building Inspector and City Planner shall determine compliance with applicable building and zoning ordinances of the City.

When the City Manager has received the recommendations from the Chief of Police, Chief Building Inspector and City Planner, he shall review such application together with such recommendations as may be furnished and shall approve such application or disapprove same with written notation of his reasons for disapproval.

Upon disapproval, the applicant may make such corrections as noted and request approval, request withdrawal and refund of license fee, or give notice of appeal from the City Manager's decision.

In the event of appeal from the City Manager's decision the applicant shall give written notice of his intention to appeal within ten (10) days of notice of the City Manager's

decision. Such appeal shall be heard by the City Council within thirty (30) days from date of such notice unless a later date is agreed upon by applicant.

Upon appeal to the City Council of the City Manager's decision based upon an adverse recommendation by the Chief of Police as to applicant's character, the applicant shall have the same burden as prescribed in Article 305, V.A.C.S. to show to the Council that he or it is of good character as a law abiding citizen to such extent that a license should be issued.

Upon hearing the Council may reverse the decision of the City Manager in whole or in part or may affirm such decision.

An applicant may appeal such decision to the District Court within thirty (30) days but such appeal shall be upon the substantial evidence rule.

For violation of any of the requirements of this ordinance, the City Manager may upon three (3) days notice of Licensee revoke the license granted hereunder. The same rights of appeal shall exist upon revocation as upon disapproval of the original application.

A person licensed hereunder, by acceptance of such license authorizes the City and its designated personnel to make inspections of the premises, facilities, manner of operation and character of any employee.

The holder of a license hereunder shall comply with all ordinances and requirements of the City of Mesquite and all laws of the State of Texas.

SECTION 7. There is hereby levied a license fee of Ten Dollars ($10.00) for each coin-operated amusement machine and a license fee of One Hundred Dollars ($100.00) for each coin-operated amusement establishment in the City.

The license of a coin-operated amusement establishment shall not exempt the owner or operator from the license fee of individual machines or obedience to any other ordinance of the City of Mesquite, including the prohibition of pool halls.

SECTION 8. *Exceptions:* This ordinance shall not apply to any agency of the United States Government, State of Texas or political subdivision thereof.

Any charitable organization operating or displaying such machines in connection with charitable activities on premises exempt from payment of ad valorem taxes under State law because of such charitable activities shall be exempt from the provisions of this ordinance to such extent.

SECTION 9. *Definitions:* For the purpose of this ordinance the following words and terms are defined as follows:

Coin-Operated Amusement Machine — Means a machine or apparatus that may be played or operated by the insertion of a coin and on which games or tests of skill, chance or ability are played, including pinball machines, and any machine initiating games of sport, shooting, or guiding objects or any machine designed for amusement or relaxation, but not including machines for vending food, drink and tobacco products, music playing or recording or apparatus commonly known as kiddie rides.

Coin-Operated Amusement Establishment — Means any business or commercial establishment or other building or location wherein three (3) or more coin-operated amusement machines are displayed.

Connection With Criminal Elements is defined as that state of affairs wherein an applicant, or an officer of, principal stockholder of, person having a substantial interest in

or management responsibility for, a corporation or other organization wherein such organization is the applicant, directly or as parent, subsidiary or affiliate, has such association, acquaintance, or business association with parties having been convicted of a felony or crime involving moral turpitude or are otherwise involved in unlawful activities, whether convicted or not, to the extent that the fencing of stolen merchandise or illegally obtained funds, the procurring of prostitutes, the transfer or sale of narcotics or illegal substances is made more feasible or likely or the protection of those of tender years from such unwholesome influences are rendered more difficult.

A determination by the United States Department of Justice that a party is a member of the "mafia" or "Cosa Nostro" family or that such party is engaged in or affiliated with a nationwide crime organization, whether formally or informally, shall be prima facie evidence, so far as the issuance of a license hereunder, that such person has "connections with criminal elements" and constitute, within the meaning of this ordinance, "criminal elements".

Character as a law abiding citizen shall mean substantially that standard employed by the Supreme Court of the State of Texas in the licensing of attorneys as set forth in Articles 305 and 306, Vernon's Annotated Civil Statutes but expressly excludes conviction by any parties of traffic violations of a Class C misdemeanor grade.

Section 10. *Legislative Policy:* It is the policy of the City of Mesquite, in the enforcement and interpretation of this ordinance, to discourage and prohibit the operation, control or interference in the operation of coin-operated amusement facilities by organized crime.

The attraction by the vending industry in general and amusement facilities in particular of criminal elements of our society is recognized and such is determined to be con-

trary to the welfare of the inhabitants of the City of Mesquite.

SECTION 11. That should any paragraph, sentence, subdivision, clause, phrase, section or provision of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be unconstitutional, illegal or invalid and shall not affect the validity of any other provision of the Code of the City of Mesquite.

SECTION 12. That any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction in Corporation Court shall be subject to a fine not to exceed Two Hundred Dollars ($200.00) for each offense.

SECTION 13. The fact that the City of Mesquite has no adequate ordinance regulating the operation of coin-operated machines or establishments wherein such machines are located in the City creates an urgency and an emergency and in the preservation of the public health, safety and welfare of its citizens requires that this ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 7th day of February , A.D., 1977.

Vernie G. Erwin
Mayor Pro Tem

ATTEST:

Norma G. McGaughy
City Secretary

APPROVED AS TO FORM:

Elland Archer
City Attorney

NO. 76-9329-D

ALADDIN'S CASTLE, INC.,

Plaintiff

v.

THE CITY OF MESQUITE

Defendant

IN THE DISTRICT COURT
OF DALLAS COUNTY, TEXAS
95TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR A MANDATORY PERMANENT INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES Now Aladdin's Castle, Inc., hereinafter called plaintiff, complaining of the City of Mesquite, hereinafter called defendant, acting by and through its City Manager, City Secretary, City Attorney, Chief of Police, Chief Building Inspector, City Planner, Mayor, and City Council, in this Plaintiff's Original Petition and Application for a Mandatory Permanent Injunction, and for cause of action would show the court as follows:

I.

Plaintiff is a corporation duly incorporated and validly existing under the laws of the State of Delaware and has been issued a Certificate of Authority by the State of Texas as a foreign corporation to transact business in this State, and defendant is a municipal corporation incorporated under the laws of the State of Texas located within Dallas County, Texas, which may be served with this petition

and process at the City of Mesquite Municipal Building, 711 North Galloway, Mesquite, Texas, by serving its Mayor, Bob Beard, or its City Secretary, Norma G. McGuaghy.

II.

Plaintiff entered into that certain Lease Agreement dated January 12, 1974, with Homart Development Co., a Delaware corporation, as lessor, and Plaintiff as lessee, covering certain premises known as 2082 Town East Mall, Mesquite, Texas, which lease is for a term of ten years at a monthly rental of $2,433.75. The plaintiff leased the above-mentioned premises in Town East Mall for the express purpose of conducting therein a coin-operated amusement establishment and for this purpose plaintiff expended approximately $80,000.00 in preparing its premises for business, all with the knowledge and encouragement of defendant.

III.

Defendant, the City of Mesquite, enacted Ordinance No. 1103 on March 19, 1973, which ordinance requires, *inter alia*, a license for coin-operated amusement establishments. Plaintiff notified defendant during January, 1976, that it desired to conduct its business in Town East Mall, Mesquite, Texas, and requested that defendant adopt a zoning change to permit plaintiff to operate in Town East Mall and amend the provisions of Ordinance No. 1103 so as to permit persons under seventeen years of age to operate and play plaintiff's coin-operated amusement machines. Pursuant to plaintiff's above-mentioned requests of defendant, Ordinances No. 1310 and No. 1314 were enacted on April 5, 1976, to encourage plaintiff to locate within the City of Mesquite and conduct its business in Town East Mall. Ordinance No. 1310 specifically amended Ordinance

No. 1103 so as to permit persons under seventeen years of age to operate and play coin-operated amusement machines such as plaintiff's and to permit persons under seven years of age to operate and play such machines if accompanied by an adult, if such machines were controlled by a coin-operated amusement establishment located within a major shopping center such as plaintiff's premises in Town East Mall. Ordinance No. 1314 was enacted to adopt a zoning change to grant to plaintiff a "conditional use designation for an indoor commercial recreation for coin-operated amusement machines within Town East Mall."

IV.

Pursuant to defendant's Ordinance No. 1103, plaintiff heretofore duly obtained a license application from the City Secretary for a coin-operated amusement establishment and submitted such application properly completed to defendant. However, on July 20, 1976, the City Manager advised plaintiff that pursuant to Ordinance No. 1103 he was disapproving plaintiff's license application based upon an unfavorable recommendation by the Chief of Police. On July 23, 1976, plaintiff through counsel notified the City Council that pursuant of Ordinance No. 1103 plaintiff desired to appeal the City Manager's decision to the City Council. The City Council heard plaintiff's appeal, and on August 16, 1976, the City Council refused to reverse the City Manager's decision and denied plaintiff's license application.

V.

Plaintiff alleges that as a result of the City Council's decision defendant, by virtue of Ordinance No. 1103, has prohibited and refused and still prohibits and refuses to allow plaintiff to operate a coin-operated amusement establishment at plaintiff's premises in Town East Mall, Mesquite, Texas.

VI.

Plaintiff alleges that the action of defendant is unlawful, illegal and void in that the action aforesaid and the city ordinance is in violation of and repugnant to federal and state constitutions pertaining to due process of law and more particularly being in violation of Article I, Section 19, of the Constitution of the State of Texas.

VII.

In connection with the foregoing, plaintiff would show the Court that said Ordinance No. 1103 is prohibitory and deprives plaintiff of its property and privileges without due process of law by reason of said Ordinance No. 1103 being vague, overbroad and indefinite in so far as such ordinance permits the denial of a license on the basis of the statutory standard that the applicant has "connections with criminal elements" when such ordinance fails to define the limits of the word "connections" or what constitutes "criminal elements" and that such ordinance, even if valid on its face, is in its application to plaintiff arbitrary, capricious, unreasonable, unlawful and as applied to plaintiff predicated upon no competent and credible evidence, and as such constitutes a clear abuse by the defendant of the powers and discretion entrusted to it by law.

VIII.

Plaintiff further alleges that Ordinance No. 1103 is in violation and repugnant to Article 1165 and Article 1175 of the Texas Revised Civil Statutes and of Article 11, Section 5, of the Constitution of the State of Texas.

IX.

In connection with the foregoing, plaintiff would show the Court that the action of the Chief of Police of the City

Mesquite in making a negative recommendation upon plaintiff's license application, the action of the City Manager in accepting such recommendation and refusing to issue a license to Plaintiff, and the action of the City Council in accepting such recommendation and refusing to reverse the decision of the City Manager not to issue a license to plaintiff is arbitrary, capricious, unreasonable and unsupported by any competent evidence, and constitutes a clear abuse by defendant of the powers and discretion entrusted to it by law.

X.

Plaintiff alleges and would show the Court that the operation of a coin-operated amusement establishment is legal and recognized by the legislature of the State of Texas by the terms of Texas Revised Civil Statutes Taxation-General Art. 13.01 et seq. (1976), and as such plaintiff alleges that it has the right to operate its business so long as plaintiff has complied with all valid statutes, regulations and ordinances applicable to plaintiff's business. Plaintiff further alleges that it has complied with the applicable provisions of all statutes, regulations and ordinances, including defendant's Ordinance No. 1103, but that defendant has denied plaintiff a license to conduct its business, which denial is arbitrary, capricious, unreasonable, unlawful and unsupported by any competent evidence, and constitutes a clear abuse by defendant of the powers and discretion entrusted to it by law.

XI.

Defendant's Ordinance No. 1103 specifically provides that license applicants such as plaintiff who have been denied a license by the City Council may appeal such denial within thirty days to the district court. In addition to all of the foregoing allegations, plaintiff hereby appeals the decision of the City Council to deny plaintiff a license

to this Court on the basis that such administrative decision of the City Council was an arbitrary, capricious, unreasonable and unlawful abuse of the discretion vested in the City Council by Ordinance 1103, as the plaintiff alleges that the discretion of the City Council was exercised in an arbitrary, capricious, unlawful and unreasonable manner without any competent and credible evidence that would have justified the City Council in denying plaintiff's license application.

XII.

Plaintiff alleges that by reason of the aforesaid actions on the part of the defendant, acting by and through its City Manager, Chief of Police and City Council, the plaintiff has been unlawfully deprived of its right and privilege to operate a legal business, has been irreparably injured and damaged and has no adequate remedy at law. Furthermore, plaintiff believes that the defendant, acting through its City Manager, Chief of Police and City Council, will enforce Ordinance No. 1103 and/or otherwise prohibit plaintiff to operate its business, as a result of which plaintiff will be further irreparably injured and damaged. Since plaintiff has no adequate remedy at law, even should this Court reverse the decision of the City Council, unless this Court grants plaintiff a permanent mandatory injunction commanding defendant to issue its license to plaintiff and further permanently restraining defendant, acting by and through its City Manager, Chief of Police and City Council, from enforcing Ordinance No. 1103's licensing provisions and/or otherwise prohibiting plaintiff from operating its business, plaintiff will be further irreparably injured and damaged in that plaintiff will be unable to operate its business of a coin-operated amusement establishment and collect income therefrom to protect its property rights and privileges and pursue a lawful and legal business. Plaintiff requests that a time

certain be set for hearing of this cause so that the City Manager, Chief of Police and City Council of Mesquite, Texas, can show cause why a permanent injunction should not be granted.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that defendant be ordered to issue its license to plaintiff pursuant to a mandatory injunction, and permanently restrained from enforcing Ordinance 1103's license provisions and from prohibiting plaintiff from operating its business at 2082 Town East Mall, Mesquite, Texas, and that defendants be issued notice to appear and show cause why at the hearing of this cause that said ordinance should not be held to be unconstitutional and void as applied to plaintiff, and/or that the action of defendant be reversed and for all other and further relief, both general and special, at law and in equity to which plaintiff may be justly entitled and for all costs of suit thereby incurred.

JOHNSON, BROMBERG, LEEDS & RIGGS
Attorney for Plaintiff

By LOUIS P. BICKEL

Louis P. Bickel

THE STATE OF ILLINOIS
COUNTY OF COOK

On this the 3d day of September, 1976, before me, the undersigned authority, personally appeared Jules Millman, known to me to be the person and officer of Aladdin's Castle, Inc. whose signature is subscribed hereto, and after first by me being duly sworn, upon his oath deposed and says that he is an officer of the plaintiff corporation in the above-styled and numbered cause, and that he has

read the foregoing Plaintiff's Original Petition and Application for Permanent Injunction and that the facts and allegations set out therein are true and correct.

JULES MILLMAN

Affiant

SUBSCRIBED AND SWORN to before me this 3d day of September, 1976.

Notary Public in and for
Cook County, Illinois

NO. 76-9329-D

ALADDIN'S CASTLE, INC.,

Plaintiff,

v.

THE CITY OF MESQUITE,

Defendant.

IN THE DISTRICT COURT
OF DALLAS COUNTY, TEXAS
95TH JUDICIAL DISTRICT

FINAL JUDGMENT

BE IT REMEMBERED that on the 13th day of January, 1977 came on to be heard the above styled and numbered cause and came the Plaintiff Aladdin's Castle, Inc. by and through its attorney or record and by its representative and came the Defendant The City of Mesquite by and through its attorney of record and its representative and announced that they were ready for trial. Both sides stated that the case would be presented to the Court without the intervention of a jury.

Thereupon the Court proceeded to hear and consider the pleadings, the evidence, the stipulations of the parties, the arguments of counsel, and the law to be applied thereto.

In consideration of all of the above, the Court is of the opinion that the Plaintiff, Aladdin's Castle, Inc., should be granted judgment and a Mandatory Permanent Injunction herein.

The Court is of this opinion because, as a matter of law, it concludes that Ordinance No. 1103 of the City of Mesquite is in violation of and repugnant to the 14th Amendment to the Constitution of the United States and is in

violation of and repugnant to Article 1, Section 19 of the Constitution of the State of Texas to the extent that in Section 4 of such ordinance it uses the words, "and connection with criminal elements," in that such words as used in such ordinance are so vague, general, and indefinite that the use of same tends to and does deny the Plaintiff, Aladdin's Castle, Inc., due process of law.

Further under the testimony of this case and in consideration of all the facts before the Court, the Court concludes as a matter of law that the decision of the City Council of the City of Mesquite upon which this appeal and trial was based was not supported by substantial evidence and that as a matter of law from all evidence before this Court no substantial evidence exists tending to show that Aladdin's Castle, Inc. has any connections with criminal elements. As a matter of fact, I make the same conclusion.

Further, in addition, this Court finds that Plaintiff, Aladdin's Castle, Inc., has proven that no substantial evidence exists from the evidence presented before this Court that would support the decision of the City of Mesquite.

It is therefore hereby ORDERED, ADJUDGED, AND DECREED that the disapproval of the Application by the City Manager of The City of Mesquite on the 20th day of July, 1976 denying issuance to Aladdin's Castle, Inc. of a license to operate a coin-operated amusement establishment at Town East Shopping Center, Mesquite, Texas be and it is hereby set aside and held for naught.

It is further ORDERED, ADJUDGED, AND DECREED that the decision of the City Council of August 16, 1976 affirming the conduct of the City Manager in his disapproval of the Application be and it is hereby set aside and held for naught in that such decision by the City Council was not based upon substantial evidence either at the hearing before the Council on August 2, 1976 or on August 16, 1976 or in the

evidence presented in the trial of this cause.

It is further ORDERED, ADJUDGED, AND DECREED that the City Secretary issue a license to Aladdin's Castle, Inc. permitting it to operate a coin-operated amusement establishment at Town East Shopping Center in accordance with its July 2, 1976 Application and at the location stated therein in accordance with Ordinance No. 1103 of the City of Mesquite, Texas, except that the only remaining act to be accomplished by any of the Defendants hereto is the ministerial act of issuing such license under such ordinance.

It is finally ORDERED, ADJUDGED, AND DECREED that the command of this judgment be carried out immediately by the officials of the City of Mesquite and that the City Secretary immediately issue such license to Aladdin's Castle, Inc. upon presentation of a certified copy of this Order by any representative of Aladdin's Castle, Inc. including Glenn A. Portman of the law firm of Johnson, Bromberg, Leeds & Riggs of Dallas, Texas. I further rule that Plaintiff not be required to post a bond in any amount and that it have and recover its costs herein expended.

RENDERED AND ENTERED this 14th day of January, 1977.

/s/ CLAUDE WILLIAMS

Judge

RETIRED JUDGE SITTING
FOR JUDGE 95th JUDICIAL
DISTRICT COURT OF
DALLAS COUNTY, TEXAS

CLERK'S CERTIFICATE

THE STATE OF TEXAS }
COUNTY OF DALLAS }

I, BILL SHAW, Clerk of the District Courts of Dallas County, Texas, do hereby certify that the above and foregoing is a true and correct copy of FINAL JUDGMENT in Cause No. 76-9329-D, entitled ALADDIN'S CASTLE, INC. vs. THE CITY OF MESQUITE as the same appears of record in my office in Vol. D-44, Page 158, Minutes of the District Court of Dallas County, for the D-95th Judicial District of Texas.

GIVEN UNDER MY HAND AND SEAL of said Court, at office in Dallas, Texas, this the 14th day of January, A.D. 1977.

BILL SHAW
Clerk of the District Courts,
Dallas County, Texas

By GAILYN JONES, Deputy
Gailyn Lanell Jones

CITY OF MESQUITE

January 31, 1977

Mr. Louis P. Bickel
Johnson, Bromberg, Leeds & Riggs
211 N. Ervay, #1500
Dallas, Texas 75201

Re: Aladdin's Castle, Inc. vs. City of Mesquite
No. 76-9329-D

Dear Mr. Bickel:

As per our telephone conversation, I have given notice of appeal in the above case but not a notice to supersede the judgment.

Although there is authority to the effect that an appeal by a City automatically supersedes the judgment, it is my understanding that notice of intent to supersede the judgment is required.

At any rate, the permit has been issued, subject to a decision on appeal, and I see no reason why your client cannot operate pending the appeal.

I do wish to emphasize that the issuance of the permit does not render the controversy moot as the permit was issued only in compliance with an order of the district court.

While I believe that the court exceeded its powers in issuing a mandatory injunction, and could only have enjoined the City from enforcement of the Ordinance, we would not risk defying a district court order, but shall argue the point on appeal.

Plaintiff's Exhibit 5

Please be advised, however, that should we prevail on appeal, we shall consider the permit issued pursuant to the void order void as of the date of the Order of the appellate court and that no revocation proceedings are necessary.

Even should the appellate court hold that you are entitled to a permit under the substantial evidence rule as the Ordinance expressly provides, but that the mandatory injunction was beyond the power of the trial court, we will consider the permit issued void and require a new permit unless the appellate court decrees to the contrary, since the permit issued was only issued pursuant to the orders of the District Court.

In answer to your specific question, no criminal complaint will be filed for operating while the Order of District Court remains in effect.

I trust that this answers all questions regarding the position of the City of Mesquite. We have too much respect for the District Court to act contrary to its orders even when we consider such orders void.

Sincerely,

ELLAND ARCHER

Elland Archer
City Attorney

CC: Norma McGaughy

City Secretary

NO. 76-9329-D

ALADDIN'S CASTLE, INC.

Plaintiff

v.

THE CITY OF MESQUITE,

Defendant

IN THE DISTRICT COURT
OF DALLAS COUNTY, TEXAS
95TH JUDICIAL DISTRICT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The undersigned, as Judge sitting for the Judge of the 95th Judicial District Court of Dallas County, Texas, after hearing all of the evidence presented by the parties to the above styled and numbered cause on the 13th and 14th days of January, 1977, and after their rendition of Judgment in such cause in favor of Plaintiff on the 14th day of January, 1977, hereby files with the clerk of the 95th Judicial District Court his Findings of Fact and Conclusions of Law as requested by the Defendant on the 20th day of January, 1977, so that such Findings of Fact and Conclusions of Law shall constitute a part of the record.

I.

FINDINGS OF FACT

1. That Defendant enacted Ordinance No. 1103 on March 19, 1973, and that such ordinance required, *inter alia*, a license for coin-operated amusement establishments and contained in section four thereof the following language:

Plaintiff's Exhibit 6

"The chief of police shall make his recommendation based upon his investigation of the applicant's character and conduct as a law abiding person and shall consider past operations, if any, convictions of felonies and crimes involving moral turpitude and connections with criminal elements, taking into consideration the attraction by such establishments of those of tender years."

2. That Defendant enacted Ordinance No. 1310 on April 5, 1976, at the request of Plaintiff so as to amend Ordinance No. 1103 so as to permit persons under the age of seventeen (17) years but not under the age of seven (7) years to operate coin-operated amusement machines in establishments located entirely within enclosed shopping malls, Ordinance 1103 prior to such amendment having prohibited all persons under the age of seventeen (17) years to operate any coin-operated amusement machines.

3. That Defendant enacted Ordinance No. 1314 on April 5, 1976, at the request of Plaintiff so as to grant to Plaintiff a conditional use designation for an indoor commercial recreation for coin-operated amusement machines within Town East Mall.

4. That pursuant to Defendant's Ordinance No. 1103, Plaintiff duly submitted its application, properly completed, for a license to operate a coin-operated amusement establishment in Town East Mall, Mesquite, Texas, but that on July 20, 1976, Defendant gave notice to Plaintiff that the license was denied based upon an unfavorable recommendation of Defendant's Chief of Police.

5. That on July 23, 1976, Plaintiff notified Defendant that pursuant to Ordinance 1103, Plaintiff desired to appeal Defendant's decision to Defendant's City Council.

6. That on August 2, 1976, Defendant's City Council held a public meeting at which Plaintiff presented its case for a

license, and Defendant presented its case for denial of such license and that after an adjournment, the City Council on August 16, 1976, affirmed the decision of Defendant to deny Plaintiff a license to operate a coin-operated amusement establishment in Town East Mall, Mesquite, Texas.

7. That on September 10, 1976, Plaintiff filed its Original Petition and Application for a Mandatory Permanent Injunction within the time period allowed for an appeal pursuant to Defendant's Ordinance No. 1103 to the district court.

8. That the only reason for Defendant's denial of a license to Plaintiff was because Defendant's City Manager and City Council, acting upon the recommendation of Defendant's police department, found as a fact that Plaintiff's parent company, Bally Manufacturing Company, owned 100% of Plaintiff's stock and was "connected with criminal elements".

9. That Bally Manufacturing Company and its President, Mr. William T. O'Donnell, were indicted, along with others, in the United States District Court for the Eastern District of Louisiana, New Orleans Division, in Criminal Docket No. 74-530, under an indictment charging violations of Title 18 U.S.C. §§ 371, 1952, 1955 and 2 concerning conspiracy, interstate travel and transportation in aid of racketeering enterprises and operation of illegal gambling business.

10. That Bally Manufacturing Company and its President were tried and acquitted of the crimes charged under the indictment referred to in finding number 9 above.

11. That Bally Manufacturing Company is not owned or controlled by nor does it have any business relationships with Emprise Corporation and that none of Bally Manufacturing Company's officers or directors are owned or con-

trolled by Emprise Corporation nor do they have any business relationships with Emprise Corporation.

12. That Bally Manufacturing Company is not owned or controlled by nor does it have any business relationships with Irving Kaye, and that none of Bally Manufacturing Company's officers or directors are owned or controlled by Irving Kaye nor do they have any business relationships with Irving Kaye.

13. That Bally Manufacturing Company is not owned or controlled by nor does it have any business relationships with Abe Green, and that none of Bally Manufacturing Company's officers or directors are owned or controlled by Abe Green nor do they have any business relationships with Abe Green.

14. That Gerardo Catina has no ownership interest in Bally Manufacturing Company, nor is he an officer or director of Bally Manufacturing Company, nor does he in any manner control or direct the actions of Bally Manufacturing Company.

15. That Gerardo Catina has no relationship with any officer or director of Bally Manufacturing Company.

16. That no substantial evidence exists, and, in fact, no evidence exists whatsoever to prove that Bally Manufacturing Company is controlled or directed by or connected with any criminal elements of any kind whatsoever.

II.

CONCLUSIONS OF LAW

1. I conclude as a matter of law that Ordinance No. 1103 of the City of Mesquite insofar as it contains the following language in section four thereof:

> "The chief of police shall make his recommendation based upon his investigation of the applicant's character and conduct as a law abiding person and shall consider past operations, if any, convictions and felonies and crimes involving moral turpitude and connections with criminal elements, taking into consideration the attraction by such establishments of those of tender years."

is in violation of and repugnant to the due process clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 19 of the Constitution of the State of Texas, and that by enacting such provisions of Ordinance 1103, Defendant exceeded the powers granted to it by Article 11, Section 5 of the Constitution of the State of Texas and Texas Revised Civil Statutes, Articles 1165 and 1175, for the reason that the words "connections with criminal elements" used in the language of such Ordinance are vague, indefinite and overbroad. I conclude that "connections with criminal elements" is vague and indefinite for the reason that such language fails to appraise an applicant of what may constitute forbidden "connections" or what may constitute "criminal elements". I further conclude that "connections with criminal elements" is void for the reason that such term is overbroad in that the word "connections" sweeps within its meaning conduct and associations that are lawful, it being my conclusion that the word "connections" may be no broader than control over an applicant to be lawful and that in this matter, Defendant has used "connections" to mean any remote associations.

2. I conclude as a matter of law that if the term "connections with criminal elements" is constitutional that Plaintiff has proven that no competent evidence exists to support the Defendant's denial of Plaintiff's license on the basis that Bally Manufacturing Company is "connected

with criminal elements", and therefore, I conclude that Defendant's action in denying Plaintiff its license was unreasonable, arbitrary and capricious and unsupported by any substantial evidence.

CLAUDE WILLIAMS

Claude Williams, *Judge*
Retired Judge Sitting for
Judge, 95th Judicial District
Court of Dallas County, Texas

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action
No. 77-0194-C

ALADDIN'S CASTLE, INC.
vs.
THE CITY OF MESQUITE

PRELIMINARY INJUNCTION

BE IT REMEMBERED THAT on the 18th day of March, 1977 came on to be heard upon application for Preliminary Injunction Plaintiff's Verified Complaint for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction. After considering the pleadings, the evidence, the arguments of counsel and the briefs submitted by the parties, the Court is of the opinion that the Temporary Restraining Order heretofore entered in the above styled and numbered civil action should become a Preliminary Injunction until such time as this matter should be heard upon application for Permanent Injunction and trial upon the merits.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT the Temporary Restraining Order heretofore entered in the above styled and numbered civil action be and is hereby made a Preliminary Injunction upon the same terms and conditions as the heretofore entered Temporary Restraining Order to remain in effect until the entry of judgment upon trial upon Permanent Injunction, with the bond heretofore set and made to remain the same until further order of the Court.

RENDERED AND ENTERED this 21st day of March, 1977.

WILLIAM M. TAYLOR

William M. Taylor
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Caption Omitted in Printing)

MOTION TO FILE SUPPLEMENTAL COMPLAINT

COMES Now Aladdin's Castle, Inc., Plaintiff herein, and moves the Court for leave to file a Supplemental Complaint in this cause in the form attached hereto as Exhibit "A". Such exhibit is made a part hereof for all purposes.

This motion is made solely to serve the ends of justice and not as to cause delay in this matter. The Supplemental Complaint merely raises an issue of law as to the Amended Ordinance 1353. Such issue of law — whether Ordinance 1353 is unconstitutionally vague — has been briefed and litigated in the State Court action in connection with Ordinance 1103, which such ordinance was the predecessor of Ordinance 1353. Therefore, the matter raised by the Supplemental Complaint would in no way delay the trial of this cause and would in no way constitute suprise to the Defendant.

WHERETOFORE, PREMISES CONSIDERED, the Plaintiff prays that this Motion be granted and that it be allowed to file and serve its Supplemental Complaint.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Caption Omitted in Printing)

SUPPLEMENTAL COMPLAINT

COMES NOW Aladdin's Castle, Inc., Plaintiff herein, and for its supplemental cause of action would show the Court the following, to wit:

1. That Defendant enacted Ordinance 1353 on February 7, 1977 and that such ordinance required, *inter alia*, a license for coin-operated amusement establishments and contained in § 6 thereof the following language:

> "The Chief of Police shall make his recommendation based upon his investigation of the applicant's character and conduct as a law abiding person and shall consider past operations, if any, convictions of felonies and crimes involving moral turpitude and connections with criminal elements, taking into consideration the attraction by such establishment of those of tender years."

The Ordinance goes on, in § 9, to define "connection with criminal elements" as follows:

> "*Connection With Criminal Elements* is defined as that state of affairs wherein an applicant, or an officer of, principal stockholder of, person having a substantial interest in or management responsibility for, a corporation or other organization wherein such organization is the applicant, directly or as parent, subsidiary or affiliate, has such association, acquaintance, or business association with parties having been convicted of a felony or crime involving moral turpitude or are otherwise involved in unlawful activities,

whether convicted or not, to the extent that the fencing of stolen merchandise or illegally obtained funds, the procurring of prostitutes, the transfer or sale of narcotics or illegal substances is made more feasible or likely or the protection of those of tender years from unwholesome influences are rendered more difficult.

A determination by the United States Department of Justice that a party is a member of the "mafia" or "Cosa Nostro" family or that such party is engaged in or affiliated with a nationwide crime organization, whether formally or informally, shall be prima facia evidence, so far as the issuance of a license hereunder, that such person has "connections with criminal elements" and constitute, within the meaning of this ordinance, "criminal elements."

2. The above quoted language — "connections with criminal elements" and the accompanying definition thereof — is in violation of and repugnant to the Due Process Clause of the 14th Amendment of the United States Constitution and in Article I, § 9, of the Constitution of the State of Texas, and that by enacting such provisions of Ordinance 1353, the Defendant exceeded the powers granted to it by Article 11, § 5, of the Constitution of the State of Texas and Texas Revised Civil Statutes, Articles 1165 and 1175, for the reason that the words "connections with criminal elements" and the accompanying definition thereof are vague, indefinite, and overboard. The phrase "connection with criminal elements" and the accompanying definition thereof are vague and indefinite for the reason that such language fails to apprise an applicant of what may constitute forbidden "connections" or what may constitute "criminal elements." Further, such phrase and accompanying definition are void for the reason that such term and accompanying definition are overboard in that the word

"connections" and the accompanying definition sweeps within its meaning conduct and associations that are lawful.

Further, the phrase "connection with criminal elements" and the accompanying definition thereof are unconstitutionally vague and overboard in that they would cause men of ordinary intelligence to guess as to the meaning of such ordinance and differ as to such meaning.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Court grant the following relief, to wit:

a. Upon final hearing of this cause, grant a Permanent Injunction prohibiting the City of Mesquite and all of its officials from in any way enforcing Sections 5, 6 and 9 of Ordinance No. 1353 with respect to Plaintiff and its facility located at Town East Mall, Mesquite, Dallas County, Texas.

b. That this Court enter a Declaratory Judgment declaring that Ordinance No. 1353 is void and unconstitutional inasmuch as it is unconstitutionally vague, and inasmuch as the Ordinance and the enforcement thereof has the effect of depriving Plaintiff of its property without due process of law and depriving Plaintiff of equal protection under the law; and that the City is estopped to enforce Ordinance No. 1353 as against Plaintiff.

c. Order the City of Mesquite to pay the Plaintiff its Costs of Court herein expended.

d. That the Court grant Plaintiff such other and further relief, both general and special, at law or in equity, to which the Plaintiff may show itself to be justly entitled.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Caption Omitted in Printing)

REPLY TO MOTION TO FILE SUPPLEMENTAL COMPLAINT

TO THE HONORABLE COURT:

Comes now the City of Mesquite, Texas, Defendant herein, and respectfully opposes Plaintiff's Motion to File Supplemental Complaint for the following reasons:

1. Such motion filed four days prior to the trial setting is not timely.

The complained of ordinance was passed four months ago and Plaintiff has waited until the week of trial (six days after the original setting) to ask leave to amend.

2. The requested amendment injects new matter in the suit and involves a separate ground of relief in no manner connected with the original relief sought. Defendant is ill prepared to defend upon such new ground upon such short notice.

3. The proposed amendment does not allege a case or controversy. *Golden v. Zurickler,* 394 U.S. 104, 89 S.Ct. 956 (1969).

4. The proposed amendment does not indicate standing of Plaintiff to raise such issue.

5. No irreparable injury is alleged in the complaint.

6. The question of law presented is presently being considered by the Court of Civil Appeals of the Fifth Supreme Judicial District of Texas and this court should decline to

consider such question until decided by the State courts on the grounds of comity. *Younger v. Harris,* 401 U.S. 37, 91 S.Ct. 746 (1971).

Wherefore, Defendant respectfully requests that Plaintiff's Motion to File Supplemental Complaint be denied.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Caption Omitted in Printing)

DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

To The Honorable Court:

Defendant respectfully moves that Plaintiff's cause of action be dismissed for the following reasons:

This honorable court does not have jurisdiction over the subject matter of this suit.

1. There is no substantial federal question under the holding of *Murphy v. California,* 225 U.S. 623, 32 S.Ct. 697, 56 L.Ed. 1229 and *Phillips v. City of Atlanta,* 57 F Supp. 588 aff. 145 F 2d 470.

2. There is no diversity jurisdiction because, as a matter of law, under the above authority, there is no amount in controversy. Plaintiff's statement in paragraph 7 of the jurisdiction allegation is at variance with the fact allegations and prayer for relief.

Wherefore, Premises Considered, Defendant City prays that this action be dismissed. Defendant further prays that Plaintiff take nothing by this suit against this Defendant, and for such other and further relief, either in equity or at law to which it may be justly entitled.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

(Caption Omitted in Printing)

[18] JULES MILLMAN,

called as a witness in behalf of the Plaintiff, having previously been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BICKEL:

Q. Would you state your name?

A. Jules Millman.

Q. The record shows you're a resident of the City of Chicago and president of Aladdin's Castle, Inc., is that correct?

A. That's correct.

Q. Now, then, isn't it correct that your amusement center in the Town East Mall, City of Mesquite commenced operation in February of 1977?

A. That's correct.

Q. What date did it commence?

A. The date?

Q. The date that it started business, yes.

A. February, '77.

[19] Q. Do you know what date in February?

A. The exact date was February 2nd.

Q. All right. Now, then, in your position as president of Aladdin's Castle have you determined what the income of your facility located there is?

MR. ARCHER: Your Honor, the Defendant on the grounds this calls for hearsay information and also information that is in violation of the best evidence rule. He certainly couldn't have personal knowledge of this matter. And if he is relying on any accounts or anything furnished by other parties we are entitled to see them.

THE COURT: If it's based on records they should be produced, not necessarily offered in evidence, but be available for examination.

MR. BICKEL: Well, Your Honor, the Federal Rules are that if he claims he knows in his capacity as an officer, I think he ought to be permitted to testify to it, Your Honor.

MR. ARCHER: May I take him on voir dire and establish it?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ARCHER:

Q. Mr. Millman, do you have an accounting [20] department?

A. Yes, I do.

Q. Who is in charge of accounting?

A. Mr. Bernard Liss.

Q. And did they furnish you certain information as president from the accounting department?

A. Yes, they did.

Q. And was it written or verbal?

A. Verbal.

Q. You don't have any writing?

A. I don't have any writing with me.

Q. Who was the party that furnished you this information?

A. Mr. Robert Milchif.

Q. Is he present in Court?

A. No, he's not.

Q. Is he ill?

A. He's in the Chicago office.

Q. Is he ill?

A. No, he isn't.

Q. Do you have any independent knowledge, any personal knowledge of the operation of this place here in Mesquite?

A. Yes, I do. I go over all of the collection reports of my company every week.

[21] Q. Do what now?

A. I review all the collection records that the different stores in my company gross each week.

Q. Is that how you determine your information?

A. I have been paying particular attention to the Mesquite store.

Q. I mean, though, is it from going over your collection reports?

A. No, I told you I spoke to Mr. Bernard Liss.

Q. Uh-huh. Well, you said you had personal information.

A. Well, I have been paying close attention —

Q. Well, I'm talking about your personal knowledge, not what someone told you. Is it from reports?

A. It's partly from reports and partly from Mr. Bernard Liss. I have an accurate accounting of what my store is doing.

Q. What you're telling the Court is that part of your information is from written reports and part is from what someone told you?

A. The same information is just reiterated on what is on the reports.

Q. Do you have any of those reports with you?

A. No, sir, I do not.

MR. ARCHER: Your Honor, again we urge our [22] objection that the reports would be the best evidence of what they contain and the information given by another party would be hearsay.

THE COURT: I'll have to sustain the objection.

CONTINUED DIRECT EXAMINATION

BY MR. BICKEL:

Q. Based upon your knowledge — how many stores do you have?

A. Ninety-nine that are open today.

Q. All right. How long have you been in the business of operating these stores?

A. Since approximately 1969 when I started.

Q. Since when?

A. 1969.

Q. Based upon — did you make an investigation of the Town East Mall from the standpoint of its being an assessible or desirable market for one of your stores?

A. Absolutely, we go over every location.

Q. Did you do that yourself?

A. Yes, I did.

Q. Is Town East Mall a suburban shopping center?

A. Yes, it is.

Q. Can you describe it to the Court?

A. Town East Mall is typical of — it's a million [23] four plus shopping mall. It's typical of surburban American shopping malls all over the country. It has probably in excess of one hundred small stores such as mine and it's anchored by major tenants such as Sears and Roebuck and other, I believe two or three other major tenants of equal size.

Q. Do you have other stores located in other suburban shopping mall centers such as Town East Mall?

A. Of our ninety-nine stores, ninety-four of them are in similar situations.

Q. Based on your experience in the business in operating these stores since 1969, do you have an opinion as to the gross revenue? Oh, excuse me. Based upon your knowledge of the Town East market potential, potential market, based upon your investigation which you made in the City of Mesquite, do you have an opinion as to the gross revenue on a monthly or annual basis that can be generated by a store such as the one you're operating at Town East Center?

MR. ARCHER: We object to this question first, Your Honor, where he says such as this store because it's irrele-

vant and immaterial what another store might do such as this store might gross. We further object to the question because this witness hasn't been qualified as an expert witness [24] to answer that type of question.

THE COURT: Well, I'll have to overrule that objection.

MR. ARCHER: May I take the witness on voir dire and determine his expertise?

THE COURT: Use the podium, please, when you examine a witness, Mr. Archer.

MR. ARCHER: All right.

VOIR DIRE EXAMINATION

BY MR. ARCHER:

Q. Mr. Millman, these other stores that you talked about, did you obtain the information in the same manner as what you have already testified from the people in your accounting department and by looking at the reports?

A. Are you asking me about existing stores?

Q. Yes.

A. Existing stores?

Q. Yes.

A. Like I said, I go over the collection reports myself and I have a good feel for what all of our stores are doing.

Q. You have a good feel for it but you've never been personally present at any particular store every day so that you know what the collection truly is?

[25] A. I've been at certain particular stores every day on a weekly basis but I can't be at all one hundred stores in a week.

Q. All right. Could you tell us about the particular stores you've been to?

A. As to how much?

Q. I want to know what kind of store it was and where it was located and how it compared to the Mesquite store.

A. Okay. Let me take a store in suburban Milwaukee, Wisconsin called South Ridge Shopping Mall. It's owned by the Falcon Company and it's constructed with the same type of construction as Town East. It's approximately the same size. It's a two-level mall. My store is located in approximately the same location and it's approximately the same size. Our store at South Ridge Mall opened, I would say, in 1971 when our company was very small. I opened it myself with my brother. In the first two months I made all of the physical collections firsthand myself. That store was doing approximately two thousand dollars a week which is in the same general vicinity that the store in Mesquite is doing.

Q. What is the median income of the people in this area?

[26] A. I don't know, but I imagine it would be similar. I don't know but I imagine it would be similar because it's the same type of neighborhood and it's the same type homes you will see when you drive around the mall.

Q. Do you know what the median income is in the Mesquite area?

A. No, I do not.

Q. Did that enter into your survey?

A. It didn't enter into my survey because from my knowledge, now, that we have one hundred stores, what I look for is I look for the general population of the metropolitan area. In this case the general population of the Dallas area, Mesquite and the surrounding suburbs.

Q. Is this store you've testified to the only store that you have personal knowledge as to the actual revenue?

A. No, it is not.

Q. All right. How do you determine the actual revenue of other stores? Is it from reports or from being there personally and counting the money?

A. Now it is from reports at this stage since I can't be at a hundred stores personally.

Q. You don't have these reports with you?

[27] A. No, sir, I do not.

MR. ARCHER: We would again urge our objection, Your Honor.

THE COURT: I will let him express an opinion and let it go to the weight.

CONTINUED DIRECT EXAMINATION

BY MR. BICKEL:

Q. Mr. Millman, in your opinion, what is the gross revenue of your store at Town East?

A. In my opinion, the annual gross revenue will be in the vicinity of $100,000.00.

Q. All right. Do you know how much it cost to operate, that is what the expenses are on the Town East Center?

A. Yes, almost to the penny.

MR. ARCHER: Here again we object on the grounds that this calls for hearsay and the best evidence —

THE COURT: Mr. Bickel, I think these records ought to be produced if there is some question about it.

MR. BICKEL: Fine, Your Honor. I'll have to ask for a recess.

THE COURT: All right.

[31] Q. (By Mr. Bickel) Mr. Millman, with reference to your operation, you stated you had ninety-nine stores at this time?

A. That's correct.

Q. Have you ever received a complaint from any municipality or police department of the operation of your store being in violation of any peace law?

MR. ARCHER: Objection, Your Honor, unless he limits it to this witness's personal knowledge. Now, what somebody else may have complained about would be hearsay.

Q. To your personal knowledge.

MR. ARCHER: I don't mean about the complaint being made, I mean about it having occurred.

THE COURT: You have to confine it to your personal knowledge and not on the basis of what you have heard.

A. To my personal knowledge, no.

Q. Okay. To your personal knowledge, do persons under seventeen years of age loiter within or [32] without your store?

A. No, they don't, because we have very strict rules set by our manager, which, as I said before we do not allow any loitering, there's no food, there's no smoking, there's no eating on the premises.

Q. Where do your customers under the age of seventeen come from, do you know?

A. They're in the mall anyway probably waiting for their parents or they're in the mall to get out of the heat.

MR. ARCHER: I move that the answer be stricken as a conclusion, Your Honor, it's not responsive.

THE COURT: It is an opinion and as I said, I will permit him to express an opinion as to where they come from because it would be impossible for anybody to track or trail everybody that comes in there. Now, that goes to the weight of it.

Q. All right. Now, in these years, the 1970's, describe the character of the crowd at a shopping center such as Town East if you know.

MR. ARCHER: Your Honor, I object. That clearly calls for a conclusion as to character of the crowd.

Q. The makeup of the crowd.

[33] MR. ARCHER: No objection to that question.

A. The makeup of the crowd of the center itself?

Q. Yes.

A. They are composed of people from the suburban areas in which the shopping center is located. Every center that I have ever been in had, except during school hours, a large number of people under twenty-one, teenagers, high school people. It seems like in the '70s these new centers have gone up and it's a place for the kids and for people to go, some place to go, something to do. A lot of them have movie theaters and so forth. They seem to be in the mall whether there is an amusement center or not.

Q. All right. Do you have an opinion, don't tell me what it is, as to what effect on your business the implementation of an ordinance restricting or prohibiting persons under seventeen from playing the machines in your center at Town East Mall? What effect would that have on your business? Do you have an opinion?

A. Yes, I have an opinion.

Q. As to what effect that would have on your business?

A. Yes, I do.

Q. And tell the Court upon what is that opinion [34] is based.

MR. ARCHER: Your Honor, we object on the same grounds as before that it calls for hearsay testimony.

THE COURT: Well, the question now is on what his opinion is based. Let's find out what it's based on. It's not the opinion that he's giving.

A. My opinion is based on at one time or another having been in almost all of my one hundred stores and seeing that almost all of our customers, at least sixty percent of them or more, are persons seventeen years old or younger.

Q. I now ask you in your opinion what would be the financial effect upon your Town East store if persons under the age of seventeen were prohibited from playing the games located therein?

MR. ARCHER: Now, I make the objection on the basis of hearsay and the best evidence rule.

THE COURT: I'll overrule the objection.

A. In my opinion, my gross receipts would be cut by sixty percent and it would put my profit picture into the red.

MR. BICKEL: No further questions.

MR. ARCHER: No questions, Your Honor.

[35] THE COURT: All right. You may step down.

MR. BICKEL: Your Honor, subject to proof of the banker and the store operator with reference to the revenues, we rest.

THE COURT: All right.

MR. ARCHER: We call Officer Murray Jackson.

Your Honor, while we're waiting, may I recall Mr. Millman for just one question?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. ARCHER:

Q. Mr. Millman, does your company operate a store in the City of Dallas?

A. Yes, we do.

Q. Where is it located?

A. It's in Valley View Mall.

Q. Valley View Mall?

A. Yes.

Q. Is it a profitable operation?

A. Yes, it is.

MR. ARCHER: Pass the witness.

REDIRECT EXAMINATION

BY MR. BICKEL:

Q. What profit does it generate?

A. It's running slightly below the store in [36] Mesquite, I'd say half of what the Mesquite store is.

Q. And how much is the profit in terms of dollars, do you know the profit of the store at Valley View?

A. In my estimation, in my opinion, it's twenty thousand dollars on an annual basis.

Q. And do you know what the relationship between that profit is and between the profit at the Town East store is?

MR. ARCHER: Our same objection. The Court had sustained objection to the testimony about the profits.

THE COURT: I'll sustain the objection.

MR. BICKEL: That's all.

THE COURT: You may step down.

MURRAY JACKSON,

called as witness in behalf of the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ARCHER:

Q. State your name and how you're employed.

A. Murray Jackson and I'm a police officer for the City of Dallas.

Q. And what are your particular duties with reference to youth?

[37] A. I work with youth on their truancy, safety, the PTA groups, crimes of youth against others, against the schools, the drug problem. Anything that is involved with youth, this is my purpose with the Department at this time.

Q. Now, you mentioned truancy, would you tell the Court what you do in your work regarding truancy?

A. Well, there is a state law that mandates that a child under the age of seventeen, between the ages of seven and seventeen will attend a hundred and sixty-five of a hundred

and eighty days that are allotted by the legislature for school, and anything over that can be filed on in JP Court for violation of the compulsory school law. An individual of that age, if they are not in school, they can be taken into custody for truancy.

Q. Is it a part of your duties to take such persons into custody?

A. Yes.

Q. Have you done so?

A. Yes.

Q. Now, what general area? Do you work in a particular area in the City of Dallas?

A. Yes, I work out around Kimball High School and I have the feeder schools from preschool, kindergarten [38] on into elementary and the middle schools that will eventually go to Kimball High School, a 25-square mile area.

Q. And have you worked in other areas in addition to this area?

A. East Dallas, West Dallas. I have done this for six years.

Q. All right. Would you tell the Court some of the problems that you encounter with reference to truancy, some of the locations that you find some of the problems that you have observed?

A. Well, we find them in each other's houses, in the parks, in the shopping centers, the 7-Eleven stores, the Sport-a-rama, which is the amusement center at Red Bird Mall; individual places, doughnut shops that have pinball machines in them. We find them in the creek bed, just in cars on the street, just about any place they can go.

Q. You've been in this work approximately six years?

A. Yes, sir.

Q. Based on your experience in working with the youths have you arrived at an opinion as to certain causes for truancy?

A. Yes.

[39] Q. Could you name some of those causes that in your opinion seem to be more probable?

A. Well, you start with the peer pressure that one person decides he doesn't want to go to school but it will be more fun if he can talk somebody else into joining him, so this puts then in their houses. Or, they will say let's go to the park because if we go home we'll get caught. The peer pressure is getting to the point where they are now in the entertainment centers with the pinball machines. If they have a place like this to go, and we can document this, we'll go up there and play the pinball machines. Why should we be in school when we can go play fussball. Why should we be in school when this is a lot more fun?

Q. How do you know when they're playing pinball machines that that's not just something that they're occupying their time with when they were already going to be truants?

A. I don't understand that.

Q. Well, let's say, you find one or a half a dozen kids playing pinball machines and it's during school hours, how do you know which is the cause and which is the effect? Do you have any documentation or any physical facts that support your opinion there?

A. Yes. We have arrested, say, for instance at [40] the 7-Eleven playing pinball machines since August of '76 twenty-four bodies and three of these we have arrested

one other time for truancy, not at a pinball machine, be it a park or whatever.

Q. So you're saying out of twenty-four arrests for truancy, twenty-one of those had never had any arrests for truancy or anything other than while they were playing pinball machines?

A. That I had taken them for.

Q. And that indicates what to you?

A. That they would probably be in school if it had not been for the availability of the machines.

Q. Now, have you also arrested persons playing pinball machines who were arrested also as truants or for when they were doing other things? You testified there were three of them that had arrests at a time when they were not playing pinball machines.

A. These were with other truants three other times.

Q. Now, do you have any documentation or remembrance as to what they were doing on these three other occasions for those other three parties?

A. Be it a park or in the car, I can't say, but it is documented on the FIR at the Youth Division.

Q. All right. Now, in addition to these arrests [41] that you described at the 7-Eleven store while they were physically playing pinball machines, were there other arrests at 7-Eleven stores?

A. Yes. These relatively same twenty-four people, we have fifteen people that we took into custody for truancy, I guess you would call it for sweating a dice game, they were either watching the game being played or they were waiting their turn or they had been playing but I could not testify that these other fifteen had been playing pin-

ball machines. By their admission they would say, yeah, we have been playing or we were waiting to play and that is why we are here but I can't take them into custody if they are fixing to or if they had that I didn't see them.

Q. All right. Now, you mentioned the Sport-a-rama, tell the Court where that is located.

A. That's in the Red Bird Mall off of Camp Wisdom and Love Freeway.

Q. What has been your experience with the truancy problems there?

A. It's heavy there, it's not in my district, it's in the Carter district and it's not a place that I could speak of. But I have had complaints that I would check. We would have complaints that we were enforcing the pinball violations at Kimball and they [42] were playing them out at Red Bird Mall. So I got with Officer Baker at Carter and he said yeah, go out there and check it. So, on February 24th, I did go in there for the first time and I did find a fifteen-year-old girl truant playing the pinball machine. And as a process of this I got with the man about it and explained to him about the laws of truancy and that they are not supposed to be in there playing fussball and definitely not the pinball if they are under seventeen.

Q. Did he have a sign displayed at the time?

A. Yes.

Q. What did the sign say?

A. It was overhanging by a chain near the bank of pinball machines saying that no one under seventeen years of age is allowed to play the pinball machines.

Q. Do you recall whether or not you questioned the girl as to whether she saw this sign or not?

A. She said she didn't see it, but there is no way she couldn't have seen it if she had gone through the door.

Q. There was no way she could have failed to have seen it?

A. There is no way she could have failed to see it. She had to walk right under it and they were posted in the room and it was hanging suspended under the [43] door.

Q. Now, do you know approximately what time of day this was?

A. It was 1:15 p.m.

Q. All right. Now, what are the hours that you allow under fifteen years old to play in the City of Dallas?

A. To play pinball?

Q. Yes, sir.

A. They can't play under seventeen years of age, period.

Q. That's twenty-four hours a day. Officer, what does your hours refer to? You have a certain provision in your ordinance relating to hours, what is that for, for entering the establishment?

A. Now, the Sport-a-rama — the amusement centers are governed by an ordinance if they are within five hundred feet of a school they cannot be operative between 9:00 a.m. and 3:00 p.m.

Q. But even after 3:00 p.m. the young people under seventeen are still not permitted to play certain types of machines, is that correct?

A. Yes. Well, nobody under seventeen period can play any marble board or pinball machine in the City of Dallas at any time.

[44] Q. But after, what was the hour, 3:00 o'clock?

A. After 3:00 o'clock a fifteen-year-old can go into the Sport-a-rama and play fussball but he cannot play the pinball machine.

Q. In your opinion, is the playing of pinball machines by persons under seventeen harmful to these persons?

A. Yes.

Q. Tell the Court why, in your opinion, you believe this is so.

A. Well, they are exposed to the older group that is there. We have made arrests of people playing the machines with the groups with marijuana on them. They are exposed to — for instance, I would not permit my child to smoke but he would play the pinball machine if I would allow it and he's twelve years for example. He goes down there and all these other folks are smoking and they will say, "Here, have a cigarette." He's being exposed to the language, the contraband maybe, the dirty jokes that might be told. Just the atmosphere itself I don't think is good.

Q. Are young people ever hustled by older people?

A. I couldn't testify to that.

Q. All right. Do you have an opinion as to whether or not there is any particular attraction to [45] these machines to people of young years?

A. Definitely.

Q. Tell the Court what you mean by that.

A. Okay. We've had instances where there was a pinball machine and then the games like the baseball game or the airplanes, where they shoot the airplanes down, this type of machine. Well, they say those are a ripoff

because they take your money and these pinball machines, you get a game for them.

Q. In other words, the challenge or the chance encourages them to play?

A. Yes, that would be a good way to put it.

Q. Have you ever known of instances where persons, young people under seventeen years of age spent money that they could not afford to spend for this type of activity?

A. Yes.

Q. Tell the Court what instances you're aware of.

A. For instance, two of them involve the same child. These people were involved in the free lunch program which means that they go to school and get meal tickets for free with which to buy or to exchange for lunches in the school lunchroom and if they can get these they will spend their money for the pinball machines.

Q. Do you know of any instances where people don't have the free lunches and they spend their money instead of buying food?

A. Well, the kids as well as the parents have told us that they were using their lunch money because there is no other way they can play the machines because there is no other way for them to get the money because they're not old enough to work to earn money, so they're using their lunch money to play the machines.

MR. ARCHER: Pass the witness.

CROSS EXAMINATION

BY MR. BICKEL:

Q. Officer Jackson, are you the gentleman that I have heard on either the radio or the TV on the way to work reporting about the traffic?

A. Yes, sir.

Q. Are you in a helicopter?

A. No.

Q. I was under the wrong impression then, I thought you were in a helicopter.

A. Well, the officers used to be in a helicopter but I have and I'm not going to get in a helicopter. We still do it with the station people who are in a helicopter and we just stay there in the studio now.

Q. Okay. Well, you probably have assumed that I [47] represent the people who are the parties to this lawsuit who operate this amusement center.

A. Yes, I understand that.

Q. I want you to know right now that they hold no belief in favor of truancy.

A. That's good.

Q. Did I understand your testimony to be that you had worked with truants as such, that was part of your official duties?

A. Yes.

Q. And you had been doing this for a number of years?

A. Right.

Q. All right. Now, one point I wanted to ask you about, are you telling the Court — you're not telling the Court, are you, sir, that if these kind of amusement centers didn't, if they didn't exist that these people would not be truant in the first place, are you?

A. No, you can't say that.

Q. Right. Now, talking about the money thing, this free lunch program and they were us. g their money for pinball machines. You're not telling the Court, are you, sir, that the children wouldn't spend their money on things other than food with or without the [48] pinball machine?

A. I can't testify to that.

Q. Right.

A. But I do know and I'm testifying that I did check the documents and they were on free lunches and it's not right.

Q. I don't think it is either.

A. And they were spending that money.

Q. Or anything for that matter.

A. If they can't afford the lunches, that's right.

Q. Right, I agree. Now, you mentioned the 7-Eleven stores a lot, is that a particular area?

A. It would be those in my area.

Q. Kimball High School?

A. The area where I check, yes.

Q. All right, sir. Is it correct that 7-Eleven, for whatever its motive, permits persons, children, people of any age to eat, drink and smoke in its premises, in and on its premises?

A. Yes.

Q. And isn't it a fact that people of all ages historically loiter about 7-Eleven stores?

A. It has been a problem.

Q. Right.

A. The ones — all I can testify to is during the [49] daylight hours because around the school they hang around the 7-Eleven.

Q. They do hang around the 7-Eleven store? And you have determined in your work with truants and in your observation of them at 7-Eleven stores and other places that one thing that tends to attract some of the school children are the libraries maintained by these establishments such as 7-Eleven?

A. No. And if I may answer it this way, we have started taking the machines from the 7-Eleven and we have no more lingerers. They get their food and they leave. They get their Coke and they walk on. Here again, I can document these, the ones they have taken out of either side of Kimball where they have taken the machines out and did not replace them, now, our loitering and trespassing problem is nil.

Q. The one thing you can't document is whether these people have ceased being truants, can you?

A. Well, okay, now, you're saying that the people we arrested before? See, there is nobody hanging around to arrest so there is no truants.

Q. No truants there?

A. Right.

Q. All right, sir. But you're not saying that there are not truants in the park or in the creek or on [50] a bus to Fort Worth?

A. No, I can't testify to that because I don't know where they are.

MR. BICKEL: Thank you.

MR. ARCHER: May this witness be excused?

THE COURT: Yes, you're excused as a witness.

MR. ARCHER: We call Sgt. Jimmy Smith.

THE COURT: Sgt. Smith has been on the stand before.

MR. ARCHER: Yes.

THE COURT: You're still under oath.

THE WITNESS: Yes, sir.

JIMMY W. SMITH,

called as a witness in behalf of the Defendant, being previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ARCHER:

Q. Sgt. Smith, you testified before, I believe, you were employed by the Mesquite Police Department and at least on previous occasions you have worked with juveniles, is that correct?

A. Yes, sir, it is.

Q. You testified to some extent about the problems regarding pinball machines, I don't remember [51] the extent of your testimony, would you tell the Court again what your dealing with these operations has consisted of in the past without going into a lot of it?

A. The primary problem that I experienced was the problem of truancy in that sort of establishment, one spe-

cifically near the police department in Mesquite that is no longer in operation now. I would estimate in the year 1974 that I probably took part in arresting some three hundred and fifty to possibly five hundred truants from that one establishment.

Q. Now, was the number of arrests the total number of truants involved or a partial number?

A. That was the ones that I had dealings with. Other officers I am sure made other arrests.

Q. Did you arrest every person that you saw that was out of school?

A. When I had the occasion to be there and they were in fact truant, I did arrest them.

Q. Well, what I am saying is that doesn't represent the total number of people that you might have known were truants?

A. No, sir, that was just from that one establishment.

Q. Oh, from one establishment?

[52] A. Yes, sir.

Q. Was this a pinball machine place?

A. Yes, sir, it was the Fun Safari and they had six or eight machines.

Q. Would you tell the Court again what your opinion is as to the effect that pinball machines and pinball machine establishments have no truants?

A. I think that this sort of establishment encourages truants to gather at these kind of locations.

Q. Are you saying they have already become truant?

A. No, sir, I don't think that they gather there after

they become truant, I think this is the type of establishment that encourages them to be truant and be there.

MR. ARCHER: I'll pass the witness.

CROSS EXAMINATION

BY MR. BICKEL:

Q. You told me about the Fun Safari before, I think it's located on a street, is it not, it fronts on a street or it did when it was in operation?

A. Yes, on South Galloway.

Q. I believe your testimony before was you told the Court that you had trouble with it in other respects, for example, drugs and stuff like that?

[53] A. On one occasion, yes.

Q. Do you find truancy in other places? Once the Fun Safari closed down, where did they go?

A. I don't know of any specific location that caused the congregation that we had at that establishment. There is truants at other places.

Q. Sure. Let me ask you this. Aside from truancy, let's take a Saturday when there is no school, do teenagers tend to congregate in shopping centers and in enclosed malls?

A. To some degree as parents shop.

Q. Right. And do they tend to congregate there whether there is a pinball machine place there or not?

A. I don't think I've noticed the congregation.

Q. I was just wondering.

A. I don't know.

Q. You're probably too young to remember but have you ever heard your father talk about the corner drug store?

A. No. I don't know if we had one.

Q. You don't recall teenagers gathering there in a social climate?

A. Yes, sir, I'm familiar with these type situations.

Q. All right. Does that still exist today, I [54] didn't know whether there were any more corner drug stores.

A. I think they congregate on parking lots and places instead of perhaps the corner drug store.

Q. Do they congregate in shopping centers?

A. Yes, sir, to some degree.

Q. In view of the fact that the shopping centers are air conditioned, the malls are?

A. Right.

MR. BICKEL: Thank you.

REDIRECT EXAMINATION

BY MR. ARCHER:

Q. Officer Smith, I'd also like to ask you with reference to the malls in Mesquite, being Big Town and Town East, what is the policy of the Mesquite Police Department as far as enforcement of the seventeen-year-old ordinance?

A. As a routine policy we don't patrol the interior of the malls. I think each mall has their own security guard and I don't think they act on this type law. We just simply respond to calls for service within the mall. When requested to do so we respond.

Q. But these calls for service involve law enforcement problems, do they not?

A. Yes, sir, such as a theft or shoplifting or [55] lost child, something of this nature.

Q. Would that be for both of the shopping center areas, the malls?

A. Yes, sir. As a routine we don't have any routine patrol in the interior of either mall by police officers.

Q. What would this do to your manpower situation if you had to begin patroling the malls for violations of under the seventeen-year-old ordinance?

A. We would probably have to hire about twelve more police officers before tomorrow.

Q. That's for the three different shifts?

A. Yes, sir.

MR. ARCHER: Pass the witness.

MR. BICKEL: Nothing further, Your Honor.

MR. ARCHER: May this witness be excused?

THE COURT: Yes. You're excused as a witness.

MR. ARCHER: We call Margaret Carruthers.

MARGARET CARRUTHERS,

called as a witness in behalf of the Defendant, being preiously sworn, testified as follows:

DIRECT EXAMINATIONS

BY MR. ARCHER:

Q. You testified in the preliminary injunction [56] hearing, did you not?

A. Yes, I did.

Q. And I don't recall exactly what your testimony was but I believe you testified that you worked with juveniles over a period of years?

A. Yes, sir, I did.

Q. And you expressed an opinion as to the problem of pinball machines and related amusement devices with reference to truancy?

A. Yes, sir. I testified of the past problems that we had with these areas.

Q. Did you also express an opinion as to whether or not the establishments and the machines were harmful in the sense that they encouraged truancy?

A. Yes, I did.

Q. Is that your opinion today?

A. Yes, sir, it is.

Q. What is the policy of the Mesquite Police Department as far as patroling the mall areas?

A. We don't normally patrol these areas unless we have a specific call because they have their own security people.

Q. You don't go in there for the purpose of determining whether persons under seventeen years old are playing the machines?

[57] A. No.

MR. ARCHER: Pass the witness.

CROSS EXAMINATION

BY MR. BICKEL:

Q. You were in here when one of the officers was testifying, were you not, Murray Jackson?

A. I don't know Murray Jackson.

Q. Then it had to be the other one. Where do the truants go when there aren't pinball places to go to?

A. I don't know. Just in the street.

Q. They are pretty tough to locate?

A. Or at a friend's house or a place like that.

Q. Why do they become truant? Why does a truant become a truant? I was a truant. Why do truants become truants?

A. Why do they become truant?

Q. Yes.

A. I could not answer that question, I'm not an expert.

Q. It's highly complex, isn't it, ma'am?

A. Yes.

MR. BICKEL: Thank you.

MR. ARCHER: May this witness be excused?

THE COURT: Yes, you're excused as a witness.

MR. ARCHER: We will call Officer Drew.

[58] WILLIAM C. DREW,

called as a witness in behalf of the Defendant, being previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ARCHER:

Q. You've testified previously that you were employed by the City of Mesquite Police Department and that you had worked in the areas of law enforcement involving pinball machine establishments, did you not?

A. Yes, sir.

Q. Do you recall whether or not you testified concerning specific problems at a specific location, Fun Safari?

A. I really don't recall really if I did or not.

Q. You don't recall if you testified to that before?

A. No.

Q. Tell the Court whether or not you did respond to calls at the Fun Safari regarding specific incidents?

A. Yes, sir, I did.

Q. Tell the Court what those incidents involved.

A. The last time I was assigned to the Patrol Division I normally worked the district adjoining the district that the Fun Safari was in and on numerous occasions I was dispatched as a backup unit to a [59] disturbance call which was usually juveniles fighting there in the Fun Safari or immediately outside in the parking lot. I recall one specific incident where I made a drug arrest inside the Fun Safari.

Q. Do you know what the age of the person was?

A. It was a juvenile, I don't recall the exact age.

Q. Now, the Fun Safari I believe sold food?

A. Yes, sir.

Q. With reference to the sale of food, have you observed any distinction in pinball places that sell food and don't serve food?

A. No, sir.

MR. ARCHER: Pass the witness.

MR. BICKEL: One second, Your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. BICKEL:

Q. Officer Drew, you and I are recently well acquainted after the last year, aren't we?

A. Yes, sir.

Q. Now, you were the initial gentleman who made the investigation of Aladdin's Castle and its parent company and recommended to the City Council of the City of Mesquite that a license not be issued in July or [60] August of 1976, did you not?

A. No, sir.

Q. Oh, I thought you were the gentleman who did make the investigation.

A. I did make an investigation.

Q. All right. And you reported the results of your investigation to the City Council of the City of Mesquite?

A. No, sir.

Q. Well, to the Police Chief who reported it to the City Council?

A. Yes.

Q. And based upon that recommendation of the Police Chief, which was based upon your recommendation, the license was denied, correct?

A. That is basically correct.

Q. All right. And thereafter we had a trial in the State District Court and you appeared as a witness in behalf of the City of Mesquite in that case, did you not, sir?

A. Yes, sir.

Q. All right, sir. Now, have you had occasion to observe the operation of Aladdin's Castle Amusement Center, whatever you want to call it, store, out at Town East Mall since it commenced its operation in [61] February of 1977?

A. Yes, sir.

Q. How many times have you observed it, please, sir?

A. I have no idea, I didn't keep track.

Q. Well, about, so the Court will have a rough idea of how many times you may have.

A. Well, are you talking about going in or walking by it or what?

Q. Either.

A. Probably about a dozen times.

Q. About a dozen times?

A. Yes.

Q. All right. Have you had any reports of a disturbance of peace there, His Honor would be interested in that if you had?

A. Not to my knowledge of a disturbance.

Q. All right. Have you had any reports of any drug traffic there?

A. Yes, sir.

Q. All right. And what reports were those?

A. I have heard from several informants and from a state agency that they have been receiving word that marijuana was being sold by some of the kids in Aladdin's Castle.

[62] In Aladdin's Castle there?

A. Yes, sir, in Mesquite.

Q. Have you followed up on any of that?

A. No, sir.

Q. Have you put undercover people in there?

A. No, sir.

Q. When did you receive these reports?

A. About two weeks ago.

Q. And you've done absolutely nothing about it?

A. Not yet.

Q. Have you had any other reports?

A. Of what?

Q. Of any misconduct being conducted at Aladdin's Castle facility there in Mesquite?

A. Yes, sir.

Q. And what were they?

A. Truancy.

Q. All right. Have you made any arrests for truancy in there?

A. I haven't.

Q. Has anyone?

A. I don't know if you technically call it arrest but I believe on one occasion one of the assistant principals from North Mesquite High School went over there to look around and found one or two [63] students in there.

Q. And this is the truancy you're referring to?

A. Yes, sir.

Q. Have you had any other reports of any misdeeds there?

A. Not to my knowledge.

Q. And this business with reference to drugs is completely unsubstantiated at this time?

A. What do you mean by that?

Q. You don't know whether it's true or not?

A. At this time.

Q. Right. You've done absolutely nothing to find out about its truth or falsity, have you?

A. Not yet.

MR. BICKEL: No further questions.

MR. ARCHER: At this time the Defendant rests.

THE COURT: All right.

MR. BICKEL: May it please the Court, I can bring the witness in cold, I don't know where I'll get with the witness but I haven't talked to him but I will be glad to go ahead and put him on.

THE COURT: All right.

DENNIS PRESSWOOD,

called as a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

[64] **DIRECT EXAMINATION**

BY MR. BICKEL:

Q. State your name, please, sir.

A. Dennis Presswood.

Q. How old are you?

A. Twenty-three.

Q. Where do you live?

A. I live in Mesquite, Texas.

Q. How long have you lived there?

A. Since February.

Q. Who do you work for?

A. Aladdin's Castle.

Q. How long have you worked for Aladdin's Castle, Incorporated?

A. Approximately one year.

Q. Since February have you been primarily at the Aladdin's Castle store in Town East Shopping Center in Mesquite, Texas?

A. Yes, sir, I've been there since February.

Q. What is your connection there?

A. I'm the manager of the store.

Q. All right. Can you tell me do you know of your personal knowledge how much money is, the revenue of Aladdin's Castle, Inc. is at Town East Mall? First of all, do you know?

[65] A. Yes.

Q. How do you know? How do you know that?

A. I'm responsible for making the collections out of the machines each week.

Q. You physically go around and take the money out of the machines?

A. Yes, sir.

Q. How often?

A. Once a week.

Q. After you take it out, do you count it?

A. Yes, sir.

Q. And after you take it out and count it, what do you do with it?

A. I bag it and take it to the bank for deposit.

Q. What bank?

A. The First State Bank of Mesquite.

Q. Can you tell the Court how much money per week you have been taking out of the machines, counting and depositing in the First State Bank?

MR. ARCHER: Your Honor, I believe there are machines there other than pinball machines and we would like to limit it to the pinball machines.

MR. BICKEL: Well, I don't want to limit it to pinball machines, Your Honor, I am talking about all machines.

[66] MR. ARCHER: We would object to any testimony about any machines other than pinball machines as being outside the scope of the matter under inquiry.

THE COURT: I will overrule the objection.

A. You want just pinball machines?

Q. All the machines.

A. All the machines?

Q. Yes.

A. We have had one bad week of fourteen hundred and a good week of two thousand and between that is what we average a week.

Q. Since when?

A. Since February.

Q. Now, how much is your salary per month?

A. My salary is eight hundred per month.

Q. And how much is the salary — are there any other employees?

A. Yes, sir, we have two part-time employees, and they are paid each three dollars an hour.

Q. And what is the total amount of the payroll, not counting the eight hundred dollars a month paid to you, at that center per month or per week?

A. The payroll for these two would be six hundred dollars.

Q. Total?

[67] A. Total.

Q. And has that been since the center opened in February, 1977?

A. Yes, sir, it's been the same since we opened.

Q. All right. Now, the rent is paid out of Chicago, isn't it?

A. Yes, sir, it is.

MR. BICKEL: Your Honor, I was checking to see if I have the lease into evidence, I don't believe I do, it doesn't make any difference. I have no further questions.

MR. ARCHER: No questions, Your Honor.

THE COURT: All right.

MR. BICKEL: One second, Your Honor.

Q. (By Mr. Bickel) Sir, do you have any policy or practice with respect to school children under the age of seventeen at any time?

A. Well, when it's in session we do not let them into the store and school lets out in Mesquite at 2:00 o'clock.

Q. Okay. Have you heard of any instances of any sale or transfer of prohibited drugs, including marijuana, at your store?

A. No, sir, not at my store.

MR. BICKEL: No further questions.

[68] MR. ARCHER: No questions.

MR. BICKEL: You may step down.

I'll ask counsel if you can stipulate that the lease entered into by and between Aladdin's Castle with Homart is for a ten-year period of time and for a total amount of $292,050.00 paid on a monthly basis and that the rate of the lease is twenty-four hundred per month paid by Aladdin to Homart.

MR. ARCHER: We would stipulate that it's either twenty-four hundred dollars a month or whatever it is a month, whatever that calculates out to, and I assume that's correct. If it's incorrect, then I will stipulate to whatever is correct.

THE COURT: What is the figure?

MR. BICKEL: Two hundred ninety-two thousand for a ten-year lease.

THE COURT: Two hundred ninety-two thousand fifty dollars for a ten-year lease?

MR. BICKEL: Yes.

MR. ARCHER: Twenty-four hundred per month would be the approximate amount.

MR. BICKEL: We rest and close.

MR. ARCHER: The Defendant rests and closes.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action
No. CA 3-77-0194-C

ALADDIN'S CASTLE, INC.
vs.
THE CITY OF MESQUITE

ORDER

Came on to be heard on June 10, 1977, Aladdin's Castle, Inc. Petition for Injunction and Supplemental Complaint for Declaratory Judgment and the parties having appeared by and through their attorneys of record, the following proceedings were had:

Defendant City of Mesquite presented its Motion to Dismiss Plaintiff's Complaint for Lack of Jurisdiction and for Failure to State a Claim upon which relief may be granted. The Court, being of the opinion that an amount in excess of $10,000.00 was alleged and that Plaintiff's Complaint alleged a constitutional deprivation as well as diversity of citizenship, Defendant's motion was overruled.

Whereupon, Plaintiff prayed leave to file its Supplemental Complaint seeking declaratory relief to which Defendant duly objected as being untimely, said Supplemental Complaint having been filed on June 6, 1977. The court thereupon offered to allow Defendant a continuance to prepare for trial upon the petition for declaratory relief but stated that both matters would be heard at the same time. Defendant's counsel declained a continuance upon the basis that a prompt hearing upon the injunctive relief was important to Defendant. Permission was granted to Plain-

tiff to file its Supplemental Complaint seeking declaratory relief.

Whereupon, Defendant moved for dismissal of Plaintiff's petition for declaratory relief for lack of jurisdiction because said complaint for declaratory relief failed to allege a case or controversy and failed to establish standing of Plaintiff to seek such relief. Defendant's motion was overruled.

The court then proceeded to hear the evidence of the parties and argument of counsel and based upon such evidence finds as follows:

That portion of City of Mesquite Ordinance 1353 passed by the City Council on February 7, 1977, wherein the term "connection with criminal elements" is stated and the definition thereof contained in Section 9 of said ordinance is void for vagueness and contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

The court further finds that a rational basis exists for the age classification contained in the City of Mesquite Ordinances prohibiting the playing of pinball machines by those under seventeen (17) years of age and Plaintiff's prayer for injunction is accordingly denied and the temporary injunction heretofore entered is hereby dissolved.

Costs of this action are taxed against the parties in the amount and to the extent that each party incurred same.

Signed and entered this 29th day of July, 1977.

W. M. TAYLOR

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action
No. CA 3-77-0194-C

ALADDIN'S CASTLE, INC.
vs.
THE CITY OF MESQUITE

JUDGMENT

This action came on for hearing before the Court, Honorable W. M. Taylor, Jr., District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is ORDERED, ADJUDGED AND DECREED that that portion of City of Mesquite Ordinance 1353 passed by the City Council on February 7, 1977, wherein the term "connection with criminal elements" is stated and the definition thereof contained in Section 9 of said ordinance is void for vagueness and contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

It is further ORDERED, ADJUDGED AND DECREED that a rational basis exists for the age classification contained in the City of Mesquite Ordinances prohibiting the playing of pinball machines by those under seventeen (17) years of age and Plaintiff's prayer for injunction is accordingly denied and the temporary injunction entered is hereby dissolved.

ORDERED entered the 29th day of August, 1977, this 20th day of September, 1977.

W. M. TAYLOR
United States District Judge